Supreme Court, U.S.
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In The
Supreme Court of The United States
October Term 1997

GUSTO RECORDS, INC. and GML, INC.,
Petitioners,

v.

RICHARD PETERSON, MIKE MITCHELL, LYNNE EASTON, NORM SUNDHOLM and BARRY CURTIS,
Respondents.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT BESSER, ESQ.*
Besser & Chapin
15332 Antioch Street, #807
Pacific Palisades, CA 90272
(310) 573-7838

Attorney for Petitioners
**Counsel of Record*

APPELLATE ADVANTAGE
4264 N. OAK TRAFFICWAY◆KANSAS CITY, MO 64116◆816-453-2424

236 pp

QUESTIONS PRESENTED

I. Whether the Ninth Circuit's ruling, limiting Petitioners' personal jurisdiction challenge to whether Respondents made out a prima facie case sufficient to withstand a motion to dismiss, violates the Due Process Clause of the Fourteenth Amendment in that it impermissibly relieves Respondents of the burden at trial to establish personal jurisdiction by a preponderance of the evidence?

II. Whether, consistent with the Due Process Clause of the Fourteenth Amendment, the district court could exercise personal jurisdiction over Petitioners whose only connection with the forum state is the fact that Petitioners signed an agreement with a non-party resident of the forum state?

PARTIES TO THE PROCEEDING

Petitioners GML, Inc., and Gusto Records, Inc., have no parent companies or subsidiaries that are not wholly owned.

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II. THE DISTRICT COURT COULD NOT, CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, EXERCISE PERSONAL JURISDICTION OVER PETITIONERS WHOSE ONLY CONNECTION WITH THE FORUM STATE IS THE FACT THAT PETITIONERS SIGNED AN AGREEMENT WITH A NON-PARTY RESIDENT OF THE FORUM STATE 18

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a Writ of Certiorari to review the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 140 F.3d 1313 (9th Cir. 1998) and is reprinted in the Appendix ("Apdx") to this petition at Apdx A - 1-29. The Ninth Circuit's Order denying petitioners' petition for rehearing and suggestion for rehearing en banc is reported at 1998 U.S. App. LEXIS 12656 (9th Cir. 1998) and is reprinted at Apdx E - 77-81. The opinion of the United States District Court for the Central District of California entering judgment against Petitioners is not reported and is reprinted at Apdx B - 30-50. Finally, the opinion of the United States District Court for the Central District of California denying Petitioners' motion to dismiss for lack of personal jurisdiction is not reported and is reprinted at Apdx C - 51-66.

STATEMENT OF JURISDICTION OF THE COURT

On April 10, 1998, the United States Court of Appeals for the Ninth Circuit entered the opinion and judgment from which review is sought. (Apdx A - 1-29). The Ninth Circuit

denied rehearing on June 15, 1998. (Apdx E - 77-81). Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1) and seek the issuance of the Writ of Certiorari pursuant to Supreme Court Rule 10.1(a) because the United States Court of Appeals for the Ninth Circuit has entered a decision conflicting with another United States court of appeals, as well as this Court's decision in McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 80 L. Ed. 1135, 56 S. Ct. 780 (1936), on the same important matter, such as to call for an exercise of this Court's supervisory powers.

STATEMENT OF THE CASE

Petitioners seek review of a judgment entered by the United States Court of Appeals for the Ninth Circuit. The basis for jurisdiction in the United States District Court for the Central District of California was diversity of citizenship, pursuant to 28 U.S.C. § 1332, in that the Respondents and Petitioners were each citizens of different states and the matter in controversy, exclusive of interest and costs, exceeded Seventy-Five Thousand Dollars ($75,000).

This case arises out of the Respondents' attempts to rescind certain royalty contracts entered into more than thirty years ago with Petitioners' predecessors. Under these contracts, Respondents assigned their rights to the master recordings ("the masters") of their songs, including "Louie, Louie," in exchange for the payment of royalties for any exploitations of the masters.

In 1993, Respondents brought this rescission action against Petitioners[1], claiming that Petitioners and their predecessors had failed to make any royalty payments under the royalty contracts. In response, Petitioners and Highland moved to dismiss Respondents' complaint, pursuant to FED. R. CIV. P. 12(b)(2), for lack of personal jurisdiction. In response to Petitioners' motion, Respondents offered a license agreement that defendant Highland had entered into with Rhino Records, Inc. ("Rhino") (a non-party) who, according

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[1] Respondents named Highland Music, Inc. ("Highland") as an additional defendant. Highland is not a party to this petition.

to the licenses, had a California address. (Apdx F - 200-206). Respondents alleged that, pursuant to these agreements, Highland transferred its purported interest in the masters to Rhino and, in return, Highland and Petitioners received from Rhino royalties from the exploitation of the masters in connection with the license.

The district court denied Petitioners' motion, concluding that Respondents had established a prima facie case supporting the exercise of personal jurisdiction. The district court found that Petitioners had purposely availed themselves of the California forum by virtue of Highland's agreement with Rhino. (Apdx C - 62-63). The district court further found that the exploitation of the masters in California through its license with Rhino was related to the allegations of Respondents' complaint. (Apdx C - 63-64). The district court, however, recognized that while this was sufficient to meet the "relatively minimal" prima facie showing, Respondents, nevertheless would eventually be "required to establish a preponderance of the evidence" on the issue of personal jurisdiction. (Apdx C - 60).

Following the district court's denial of their motion, Petitioners filed an answer, reasserting as an affirmative defense that the district court lacked personal jurisdiction. Following discovery, this case was set for a bench trial. Days before trial, the district court, pursuant to FED. R. CIV. P. , filed its Pre-Trial Conference Order. (Apdx D - 67-76). Paragraph 2 of the Order states that Petitioners would challenge the district court's exercise of personal jurisdiction

over them as improper because Petitioners were neither residents of California nor had minimum contacts with that forum. (Apdx D - 69). Paragraph 8a of the Order further states that the issue of personal jurisdiction remained to be litigated at trial. (Apdx D - 71).

In its Order entering judgment for Respondents, however, the district court never entered findings concerning its exercise of personal jurisdiction over Petitioners, despite the fact that, according to the district court's Pretrial Order, the issue of personal jurisdiction was contested and was to be litigated at trial. (Apdx B - 30-50).

Petitioners appealed the district court's judgment, challenging, inter alia, the Respondents' failure to establish evidence at trial supporting the district court's exercise of personal jurisdiction. The Ninth Circuit, however, rejected Petitioners' argument, holding that Petitioners were limited to challenging the district court's initial ruling that Respondents had made out a prima facie case of personal jurisdiction sufficient to withstand a motion to dismiss. (Apdx A - 13). The Ninth Circuit agreed with Petitioners that Respondents bore the higher burden of "prevailing on the jurisdictional issue by a preponderance of the evidence" at trial. (Apdx A - 11). The Ninth Circuit, however, observed that "none of the parties developed a record on the issue of personal jurisdiction beyond the few submissions each made in litigating the [Petitioners'] motion to dismiss." (Apdx A - 12). The Ninth Circuit further stated that Respondents "had little reason to do so: [they] prevailed on the personal jurisdiction question on

pretrial motion, and [Petitioners] did not contest the issue any further." (Apdx A - 12-13). The Ninth Circuit thus held that Petitioners could not seek review of Respondents' failure to prove personal jurisdiction by a preponderance of the evidence because Petitioners had not reasserted their personal jurisdiction challenge following the district court's denial of their motion to dismiss. (Apdx A - 13). Instead, Petitioners would be limited to challenging the district court's finding that Respondents had made out a prima facie showing of personal jurisdiction at the pleadings and pre-discovery phase of this lawsuit. (Id.)

Reviewing Petitioners' appeal under this relaxed evidentiary standard, the Ninth Circuit found that Respondents had established a prima facie that Petitioners had sufficient, purposeful contacts to establish personal jurisdiction. (Apdx A - 13-15). The lynchpin of the Ninth Circuit's holding was the license agreement between Highland and Rhino, which Respondents had offered in response to Petitioner's motion to dismiss, as well as another, similar license agreement between Petitioners and Warner Special Products ("Warner"), listing Warner as having a California address, which Respondents introduced into evidence at trial. (Apdx A - 14). From these agreements the Ninth Circuit went on to infer that Petitioners "engaged in negotiations with California companies"; that Petitioners "probably wrote letters and made telephone calls to the California offices of these companies in conducting their negotiations"; that they "quite possibly traveled to California as a part of these negotiations"; and that "the licenses may

have actually been granted (i.e. the contracts formed) in California." (Id.) Respondents, however, offered no evidence at trial—and the record contains no such evidence—supporting these "inferences" drawn by the Ninth Circuit. Nevertheless, the Ninth Circuit relied upon these inferences in holding that "[i]f these purposeful contacts did occur, then they would suffice to support an exercise of specific personal jurisdiction." (Apdx A - 14). According to the Ninth Circuit, "[c]ontract negotiations are classic examples of the sort of contact that can give rise to in personam jurisdiction, and the [Respondents'] cause of action 'arises out of' those contacts, as it is the failure of [Petitioners] to provide royalties on these and other licensing agreements that serves as the basis for the plaintiffs' suit." (Apdx A - 14-15).

In conclusion, the Ninth Circuit said that "[h]ad defendants pursued their defense further after losing their motion to dismiss, perhaps they could have rebutted, by a preponderance of the evidence, the inferences to which the licenses give rise." (Apdx A - 15).

Petitioners timely filed a petition for rehearing, alerting the Ninth Circuit that their decision: (1) conflicted with precedent from the Ninth Circuit and other circuit courts of appeals that the Respondents, as the parties invoking jurisdiction, bore the ultimate burden of proving at trial the existence of personal jurisdiction under the preponderance of the evidence standard; (2) the opinion relied upon inferences not contained in the record, which constituted manifest error; and (3) the opinion conflicted with the well-established law of

this Court that a district court could not, consistent with due process, exercise personal jurisdiction over a non-resident defendant based only on the fact that the Petitioners had entered into a contract with a resident of the forum. The Ninth Circuit denied Petitioners' Petition for Rehearing on the issue of personal jurisdiction. (Apdx E - 77-81).[2]

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[2] The Ninth Circuit, however, did modify its opinion to correct its erroneous statement that Petitioners did not raise as an affirmative defense in their answer the district court's lack of personal jurisdiction. (Apdx E - 80). In addition, the Ninth Circuit added a footnote in an to attempt to distinguish its prior decision in Sinatra v. National Enquirer Inc., 854 F.2d 1191 (9th Cir. 1988), upon which Petitioners relied in urging rehearing. (Id.).

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT'S RULING, LIMITING PETITIONERS' PERSONAL JURISDICTION CHALLENGE TO WHETHER RESPONDENTS MADE OUT A PRIMA FACIE CASE SUFFICIENT TO WITHSTAND A MOTION TO DISMISS, VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IN THAT IT IMPERMISSIBLY RELIEVES RESPONDENTS OF THE BURDEN AT TRIAL TO ESTABLISH PERSONAL JURISDICTION BY A PREPONDERANCE OF THE EVIDENCE.

The Due Process Clause of the Fourteenth Amendment acts as a limitation on the jurisdiction of a court to enter judgment against a non-resident defendant. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-472, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L.Ed. 2d 490 (1980).

"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." World-Wide Volkswagen, 444 U.S. 286, 291.

The existence of personal jurisdiction, in turn, depends upon whether the non-resident defendant purposefully

established minimum contacts in the forum state to make it fair to require defense in the forum. Burger King, 471 U.S. at 474; Kulko v. Superior Court of California, 436 U.S. 84, 91, 98 S. Ct. 90, 56 L.Ed.2d 132 (1978).

This Court long ago held that the plaintiff, as the party invoking the jurisdiction of court, always bears the burden of establishing that jurisdiction exists. McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189, 80 L.Ed. 1135, 56 S.Ct. 780 (1936). In determining whether a plaintiff has satisfied this burden, the courts have established a series of evidentiary standards to employ, depending on the nature of the hearings and the evidence a plaintiff presents. The first, the "prima facie" standard, is employed where the plaintiff, typically in response to a Rule 12(b)(2) motion to dismiss, proffers affidavits and other papers that, if credited, are enough to support findings of fact essential to personal jurisdiction. See, e.g., Foster-Miller, Inc. v. Babcox & Wilcox Canada, 46 F.3d 138, 145 (1st Cir. 1995); Dakota Indus., Inc. v. Dakota Sportswear, Inc., 946 F.2d 1384, 1387 (8th Cir. 1991); Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir.), cert. denied, 498 U.S. 854, 112 L. Ed. 2d 1, 111 S. Ct. 150 (1990); Serras v. First Tennessee Bank Nat'l Assoc., 875 F.2d 1212, 1214 (6th Cir. 1989); Data Disc, Inc. v. Systems Technology Assoc., 557 F.2d 1280, 1285 (9th Cir. 1977). In determining whether this showing has been made, the district court does not act as fact-finder; instead, it views the facts in the light most favorable to the plaintiff. See, e.g., Babcox, 46 F.3d at 145; Dakota Indus., 946 F.2d at 1387;

Serras, 875 F.2d at 1214.

If, on the other hand, the written submissions directly conflict on material issues of fact or seem to require credibility determinations, the district court may order an evidentiary hearing on the issue of personal jurisdiction. See, e.g., Babcox, 46 F.3d at 145-146; Serras, 875 F.2d at 1214; Data Disc, 557 F.2d at 1285. If the facts necessary to establish personal jurisdiction are intertwined with the merits of the case, the district court may defer the matter to the trial. Data Disc, 557 F.2d at 1285. Under either of these scenarios, however, the evidentiary burden on the party asserting jurisdiction increases to the preponderance-of-the-evidence standard. See, e.g., Boit v. Gar-Tec Prods, Inc., 967 F.2d 671, 676-677 (1st Cir. 1992); Ball, 902 F.2d at 197; Data Disc, 557 F.2d at 1285.

Regardless of whether decided by a pretrial motion under Rule 12(b)(2), a pretrial evidentiary hearing or at the trial on the merits, the plaintiff always bears the burden of establishing the existence of personal jurisdiction. McNutt v. General Motors, 298 U.S. at 189; Boit, 967 F.2d at 676; Serras, 875 F.2d at 1214; Data Disc, 557 F.2d at 1285 n.3. Thus, even if a district court issues a pretrial order denying defendant's 12(b)(2) motion, "the defendant may proceed to trial without waiving the defense." Serras, 875 F.2d at 1214. "A threshold determination that personal jurisdiction exists "does not relieve [the plaintiff] . . . at the trial of the case-in-chief from proving the facts upon which jurisdiction is based by a preponderance of the evidence." Id. As this Court has

held, the party asserting jurisdiction "must carry throughout the litigation the burden of showing that he is properly in court." McNutt, 298 U.S. at 189.

The Ninth Circuit's ruling, however, turns these well-established principles on their head. The Ninth Circuit ruled that Petitioners, by not affirmatively reasserting their personal jurisdiction challenging following the district court's denial of their Rule 12(b)(2) motion, "may only appeal from the district court's holding that plaintiffs made out a *prima facie* case sufficient to support an exercise of personal jurisdiction." (Apdx A - 13). That ruling clearly conflicts with decisions from the Ninth Circuit and other circuit courts of appeal (including different panels from the Ninth Circuit) that a plaintiff bears the ultimate burden of proving these jurisdictional facts at trial by a preponderance of the evidence, even if a plaintiff successfully avoids a preliminary motion to dismiss by making a prima facie showing of jurisdiction. See, e.g., Boit, 967 F.2d at 1214; Serras, 875 F.2d at 1214; Sinatra v. National Enquirer, Inc., 854 F.2d 1191, 1194 (9th Cir. 1987)[3].

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[3] The Ninth Circuit attempted to distinguish its prior decision in Sinatra from the facts of the present case, reasoning that in Sinatra, the defendant entered a special appearance for the sole purpose of contesting jurisdiction and otherwise refused to participate in the litigation. (Apdx A - 13 n. 3). That is both factually and legally incorrect. Nothing in the Sinatra opinion indicates that the defendant filed a special appearance. Instead, the defendant, as did Petitioners, filed a

Furthermore, the Ninth Circuit's rule conflicts with the level of evidentiary scrutiny employed by this Court in Burger King in reviewing the existence of personal jurisdiction following a trial on the merits. In Burger King, the defendants filed pretrial motions challenging the district court's exercise of personal jurisdiction. Burger King, 471 U.S. at 469. Following the denial of these motions, the case went to trial, after which the district court concluded that it had personal jurisdiction over the defendants. Id. Nothing in this Court's opinion indicates that the defendants took any additional steps, such as those suggested by the Ninth Circuit, to re-challenge the existence of personal jurisdiction. Nevertheless, this Court did not limit its review only to the materials submitted in response to defendants' motion to dismiss; instead, this Court engaged in a full-blown review of the evidence adduced at trial in determining whether plaintiffs had met their burden

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motion to dismiss for lack of personal jurisdiction. Moreover, nothing in the Sinatra opinion indicates that the Ninth Circuit, in determining the appropriate evidentiary standard to apply, gave any weight to the fact that following the denial of its motion, the defendant withdrew from participating at trial. Instead, the Ninth Circuit clearly stated that "because this case proceeded to trial, the plaintiff is put to the full burden of proof and must establish the jurisdictional facts by a preponderance of the evidence." 854 F.2d at 1194. Although the Ninth Circuit found that the plaintiff had met its burden, it reached this ruling only after thoroughly reviewing the evidence at trial under the higher "preponderance of the evidence" standard.

of showing personal jurisdiction. 471 U.S. at 478-482. Following this review, this Court concluded that "there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz . . . did not offend due process." 471 U.S. at 478. Although this Court did not expressly hold that it was reviewing the district court's jurisdictional findings under the "preponderance of the evidence" standard, it is clear that the phrase "substantial record evidence" refers to a far greater evidentiary burden than the lesser, prima-facie-case standard employed by the Ninth Circuit.

The Ninth Circuit failed to provide any convincing reason for casting aside this Court's and the other courts of appeals precedent and adopting its new rule. The Ninth Circuit did suggest that its new rule was necessary because "none of the parties developed a record on the issue of personal jurisdiction." (Apdx A - 12). That concern, however, is misplaced, both on the law and on the record in this case. Respondents, as the parties seeking to invoke the jurisdiction of the federal court over the Petitioners, always bore the burden of proving jurisdiction. McNutt, 298 U.S. at 189; Boit, 967 F.2d at 1214; Serras, 875 F.2d at 1214; Sinatra, 854 F.2d 1191, 1194 (9th Cir. 1987). The fact that Respondents failed to meet this burden in their case-in-chief at trial should not constitute grounds to penalize Petitioners.

Furthermore, it is not as if Respondents were unaware of their need to present evidence on this issue at trial. Following the denial of their motion to dismiss, Petitioners

filed their Answer to Plaintiffs' First Amended Complaint, reasserting their affirmative defense that the district court lacked personal jurisdiction.[4] (Apdx A - 7). Moreover, in its Pretrial Conference Order filed November 2, 1994 (just days before trial), the district court, in paragraph 2 of the Order, states that Petitioners challenged the district court's exercise of personal jurisdiction over them because Petitioners are neither residents of California nor have minimum contacts with that forum. (Apdx D - 69). Paragraph 8a of the Order further states that the issue of personal jurisdiction remained to be litigated at trial. (Apdx D - 71). Hence, Respondents at all times (before and at trial) were well aware of their need to establish personal jurisdiction over Petitioners. The fact that Respondents failed to create a record on this critical issue simply means that they failed to carry their burden of proof at the trial during their case-in-chief.

The Ninth Circuit also suggested that its new rule is not new at all, but has been implicitly recognized in the Ninth and other circuit courts of appeals, citing Rano v. Sipa Press, Inc., 987 F.2d 580 (9th Cir. 1993), and Brownlow v. Aman, 740 F.2d 1476 (10th Cir. 1984). No such rule, however, can be derived from either case.

Rano was not an appeal from a trial verdict. Rather,

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[4] On rehearing, the Ninth Circuit corrected its erroneous statement that Petitioners failed to raise the affirmative defense of personal jurisdiction in their responsive pleading. (Apdx E - 80).

Rano concerned an appeal from a grant of summary judgment dismissing plaintiff's claim for lack of personal jurisdiction. Thus, the reason the court in Rano applied the lesser prima facie standard was because neither a hearing nor trial was ever conducted on the issue of personal jurisdiction. Id. at 587 n.3. In discussing the appropriate evidentiary showing to establish personal jurisdiction, however, the Rano panel reiterated the well-established rule that the plaintiff must establish jurisdictional facts by a preponderance of the evidence if the district court holds an evidentiary hearing or the case proceeds to trial on the issue of personal jurisdiction. Id. at 587 n.3.

Here, by contrast, the matter proceeded to trial. Hence, Petitioners are entitled to challenge the Respondents' failure to establish at trial the existence of personal jurisdiction under the preponderance-of-the-evidence standard.

Brownlow is equally inapposite. In Brownlow, the defendants expressly limited their jurisdictional challenge to the district court's denial of their Rule 12(b)(2) motions to dismiss for lack of personal jurisdiction. See id. at 1480. For whatever reason, the defendants in Brownlow did not challenge the exercise of personal jurisdiction under the heavier preponderance of the evidence standard.

Here, by contrast, Petitioners did not limit their challenge to the district court's denial of their motions to dismiss. Rather, Petitioners challenged the district court's judgment on the merits on the grounds that Respondents failed to show the existence of personal jurisdiction by a preponderance of the evidence.

The effect of the Ninth Circuit's ruling in this case is to shift the burden of proof on the issue of personal jurisdiction to Petitioners. The Ninth Circuit held that Petitioners were required to rebut Respondents' prima facie showing of personal jurisdiction "by a preponderance of the evidence." (Apdx A - 15). In other words, once a plaintiff successfully staves off a motion to dismiss for lack of personal jurisdiction, the Ninth Circuit's opinion establishes that jurisdiction is presumed and remains unless and until Petitioners can disprove personal jurisdiction by a preponderance of the evidence. This new rule directly conflicts with the law of this Court as set forth in McNutt, as well as the other circuit courts of appeals. McNutt and other circuit courts of appeals hold that Respondents, as the parties seeking to invoke jurisdiction over Petitioners, bear the burden of showing such jurisdiction throughout the litigation, even at trial, notwithstanding a district court's denial of a Rule 12(b)(2) motion. See, e.g., McNutt, 298 U.S. at 189; Boit, 967 F.2d at 674; Serras, 875 F.2d at 1214; Data Disc, 557 F.2d 1285 n.3.

In sum, the panel's new rule creates a direct conflict with this Court's holding in McNutt as well as the holdings of other circuit courts of appeals. Moreover, the Ninth Circuit's new rule substantially affects a rule of national application in which an overriding need for national uniformity exists. Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, Petitioners respectfully request this Court to grant a Writ of Certiorari to review the judgment and opinion

of the United States Court of Appeals for the Ninth Circuit.

II. THE DISTRICT COURT COULD NOT, CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, EXERCISE PERSONAL JURISDICTION OVER PETITIONERS WHOSE ONLY CONNECTION WITH THE FORUM STATE IS THE FACT THAT PETITIONERS SIGNED AN AGREEMENT WITH A NON-PARTY RESIDENT OF THE FORUM STATE.

Regardless of which standard of review was employed, however, Petitioners submit that the facts relied upon by the Ninth Circuit cannot, as a matter of law, support the district court's exercise of personal jurisdiction.

The only "contacts" that are in this record are the Rhino and Warner licenses, reflecting that Rhino and Warner have California addresses. However, well-settled precedent from this Court holds that evidence of a contract, by itself, is not enough to support the exercise of personal jurisdiction over a non-resident defendant. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478, 105 S. Ct. 2174, 85 L. E. 2d 528 (1985). Rather, Respondents must establish that the contracts created continuing relations and obligations with the forum state. Burger King, 471 U.S. at 473.

No record evidence establishes that the Rhino and Warner licenses created continuing relations or obligations

between Petitioners and California.[5] First, Petitioners are not even parties to the Rhino license. (Apdx F - 200-206). Second, no evidence other than the California addresses listed on Rhino's or Warner's licenses, suggests that either Rhino or Warner is in fact a California resident. Respondents, for example, presented absolutely no evidence showing where Rhino or Warner are incorporated or where either maintains its principal place of business.

Furthermore, the licenses do not create obligations that are to be performed exclusively in California. Instead, the licenses contemplate that Rhino and Warner will distribute recordings throughout its "Territory" which, under the Warner licenses, is defined as the entire United States and Canada (Apdx F - 87, 98, 106, 114, 123, 137, 198) and, under the Rhino license, is defined as "the world." (Apdx F - 201). The licenses do not require Rhino or Warner to make payments in California; instead they are required to direct royalties and advance payments to Petitioners, who are Tennessee residents. (Apdx C - 54).

Finally, neither license is governed by California law. The Warner licenses state that they are to be interpreted and performed in accordance with New York law. (Apdx F - 87, 98-99, 106, 114-115, 123-124, 137, 198). The Rhino license

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[5]The record contains absolutely no evidence that Petitioners placed any telephone calls to California, mailed letters or correspondences to Warner or Rhino in California or traveled to California.

98-99, 106, 114-115, 123-124, 137, 198). The Rhino license states that it is to be interpreted and performed in accordance with Tennessee law. (Apdx F - 204). If anything, these forum-selection clauses give rise only to an inference that the Petitioners were purposely availing themselves of the protections of New York and Tennessee law, rather than California law, and dispel any inference that Petitioners could reasonably foresee possible litigation in California relating to these licenses. Burger King, 471 U.S. at 428 (stating that a choice-of-law provision in a contract should be a factor in determining whether a non-resident defendant has purposely invoked the benefits and protections of the forum's laws).

In sum, the only record evidence before this Court shows that Petitioners entered into some license agreements with Warner, who purportedly has a California address. At most, these constitute "random," "attenuated" or "fortuitous" contacts with California which cannot as a matter of law support the exercise of specific personal jurisdiction over Petitioners in that state. Burger King, 471 U.S. at 475.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant the Writ of Certiorari.

Respectfully submitted,

Robert Besser, Esq.
Besser & Chapin
15332 Antioch Street, #807
Pacific Palisades, CA 90272
(310) 573-7838

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS,	)	
Plaintiffs-Appellees,	)	
	)	No. 95-56393
v.	)	D.C. No.
	)	CV-93-04672-WDK-JGx
HIGHLAND MUSIC, INC.,	)	
Defendant,	)	
and	)	
GUSTO RECORDS, INC.;	)	
G.M.L., INC.,	)	
Defendants-Appellants.	)	

G.M.L., INC., a Missouri	)	
corporation; HIGHLAND	)	
MUSIC, INC.,	)	
Plaintiffs-Appellants,	)	
	)	No. 97-55599
v.	)	D.C. No.

	)	CV-96-022420-WDK-JGx
RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS;	)	
GERALD DENNON;	)	
JERDEN MUSIC, INC.,	)	
dba Jerden Industries, Inc.,	)	
dba Great Northwest Music	)	
Company, BBDO	)	
Worldwide Inc., dba BBDO	)	
Worldwide Network,	)	
Defendants-Appellees.	)	

RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS,	)	
Plaintiffs-Appellees,	)	
	)	No. 97-55597
v.	)	D.C. No.
	)	CV-93-04672-WDK
HIGHLAND MUSIC, INC.;	)	
GUSTO	)	
RECORDS, INC.;	)	

G.M.L., INC.,)
Defendants-Appellants,)
and
STEPHEN HAWKINS,)
Appellant.)

Appeals from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Argued and Submitted
February 3, 1998--Pasadena, California

Filed April 10, 1998
Amended June 15, 1998

Before: Betty B. Fletcher, Frank J. Magill,[1] and Thomas G. Nelson, Circuit Judges.

OPINION

FLETCHER, Circuit Judge:

This case involves an attempt by the Kingsmen, a musical group, to secure a rescission of the contract by which

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[1]Honorable Frank J. Magill, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

they assigned to others the rights to their popular recording of the hit song, "Louie, Louie." We review three actions consolidated on appeal. In the first, the parties litigated the right to rescind. In the second, the defendants sought a declaratory judgment to limit the effect of the judgment of rescission.[1] In the third, the district court imposed contempt sanctions upon the defendants for their refusal to comply with the judgment of rescission. We affirm the district court in all respects.

I.

The facts of this procedurally convoluted case are relatively simple. The members of the Kingsmen seek to secure their rights to the master recordings (the "Masters") of their hit song, "Louie, Louie." The group made the recording over thirty years ago. They then sold the Masters to one Specter Records (first through their agent, Jerden Records, but ultimately on their own behalf) in return for nine per cent of any profits or licensing fees that the recording might generate. The Kingsmen and Specter entered into their contract in 1968. Specter's interest in the Masters was eventually transferred to Gusto Records and GML, who were

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[1]For simplicity's sake, we will refer to the Kingsmen as "plaintiffs" and Gusto et al. as "defendants" throughout this opinion, although the parties technically switched roles in the declaratory action.

the named defendants in the rescission action. The parties do not dispute that the Kingsmen have never received a single penny of the considerable royalties that "Louie, Louie" has produced over the past thirty years.

In 1993, the Kingsmen brought suit in federal district court in California for rescission of the contract, basing their claim entirely on actions (or inactions) by the defendants that fell within the four-year statutory limitations period. After a full trial, the district court ruled in plaintiffs' favor and granted the rescission, restoring possession of the Masters to the Kingsmen. Defendants refused to comply with that judgment, however, instead filing a declaratory action in federal district court in Tennessee. In the Tennessee action, defendants asked for a declaration that plaintiffs were not entitled to any of the income that continued to be generated by those licenses that pre-existed the rescission. In the meantime, defendants steadfastly refused to comply with the first judgment and to return possession of the Masters to the Kingsmen.

The district court in Tennessee transferred the declaratory action to the Central District of California, returning it to the district judge who had handled the original action. The judge ruled, on summary judgment, that the rescission enforced in the original action was effective as of the date when the Kingsmen formally declared their intention to rescind -- the date of the filing of the complaint -- and that defendants must pay to the Kingsmen any royalties or profits that accrued thereafter, whether from licenses entered into after the date of rescission or from licenses that preexisted

that date. The district court also issued an order in aid of enforcement of its first judgment, commanding defendants to turn over the Masters to plaintiffs forthwith. Finally, on plaintiffs' motion, the district court found defendants in contempt of court for having flagrantly violated the first judgment by refusing to turn over the Masters in a timely fashion, and also by continuing to misappropriate profits from the Masters by holding themselves out as the owners of the Masters and entering into unauthorized licenses. Defendants appeal all of these rulings.

Highland Music and Stephen Hawkins (Highland's president and sole shareholder) are also parties to this appeal. Highland negotiated and managed many of the licenses issued by GML and Gusto for "Louie, Louie" and was a party to the declaratory action. Highland and Hawkins were both cited for contempt by the district court for aiding and abetting GML and Gusto in entering into the unauthorized, post-judgment licenses. They appeal these rulings.

This action fell within the district court's diversity jurisdiction. *See* 28 U.S.C. S 1332. The judgment of rescission, the declaratory judgment, and the contempt order are all appealable final orders. *See* 28 U.S.C. § 1291.

II. The Rescission Action

A.

Gusto and GML's primary contention on appeal in the rescission action is that the district court in California exceeded its authority under the Due Process Clause of the

Federal Constitution in exercising personal jurisdiction over the defendants.[2] We review a district court's exercise of personal jurisdiction de novo. *See Sinatra v. National Enquirer*, 854 F.2d 1191, 1194 (9th Cir. 1988).

Defendants' claim comes to us in a rather odd posture. Defendants filed a motion to dismiss for lack of personal jurisdiction at the outset of the proceedings below. The district court denied that motion, finding that plaintiffs had made out a prima facie case that an exercise of jurisdiction was proper. Defendants then failed to contest the issue of personal jurisdiction any further in the proceedings before the district court. They did state in their answer that lack of personal jurisdiction was an affirmative defense. However, they did not include the defense in any motion for summary judgment, nor request dismissal at the close of plaintiffs' case for lack of personal jurisdiction (although they moved for dismissal on several other grounds), nor, post trial, did they request the district court to dismiss on the grounds that plaintiffs had failed to carry their burden of proving personal jurisdiction. Nonetheless, defendants argue on appeal that the judgment below must be vacated because the present state of the record is insufficient to support a finding, by a preponderance of the evidence, that defendants were subject

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[2]California's "long-arm" statute extends as far as federal due process limitations allow. *See* Cal. Civ. Proc. Code § 410.10; *Sinatra v. National Enquirer*, 854 F.2d 1191, 1194 (9th Cir. 1988). Thus, we need not conduct a separate inquiry to determine whether the exercise of jurisdiction exceeded any statutory limitations.

to the personal jurisdiction of the courts of California. This claim raises three issues: (1) Did defendants completely waive their right to appeal the district court's exercise of personal jurisdiction; (2) If not, against what evidentiary standard should that exercise of personal jurisdiction be judged on appeal, given the present posture of this case; and (3) Measured against the applicable standard, was the district court's conclusion that it could exercise jurisdiction over defendants correct?

1.

The federal rules of civil procedure provide that "A defense of lack of jurisdiction over the person . . . is waived . . . (B) if it is neither made by motion under this rule nor included in a responsive pleading . . . ." Fed. R. Civ. P. 12(h)(1). The negative converse of this rule would thus suggest that it is not waived if raised by motion. Other circuits have reached this conclusion, holding that a defendant's motion to dismiss for lack of personal jurisdiction, without more, is sufficient to avoid the waiver provision embodied in Rule 12. *See Brownlow v. Aman*, 740 F.2d 1476, 1483 n.1 (10th Cir. 1984); *Adden v. Middlebrooks*, 688 F.2d 1147, 1156-57 (7th Cir. 1982). However, Rule 12 does not say that there are no other means of waiving a defense of lack of jurisdiction over the person. Plaintiffs argue that, even though defendants contested the exercise of jurisdiction at the outset of the trial, their failure to raise the issue again at any point in this vigorously litigated proceeding should be construed as an

acquiescence to suit in California and hence a waiver of any right to contest the court's in personam jurisdiction on appeal.

Plaintiffs' argument has some force. Rule 12(h)(1) specifies the minimum steps that a party must take in order to preserve a defense. It does not follow, however, that a party's failure to satisfy those minimum steps constitutes the only circumstance under which the party will be deemed to have waived a defense. Most defenses, including the defense of lack of personal jurisdiction, may be waived as a result of the course of conduct pursued by a party during litigation. *See Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296-97 (7th Cir. 1993) (affirming district court's finding that defendants' conduct during litigation constituted waiver of personal jurisdiction); *Yeldell v. Tutt*, 913 F.2d 533, 538-39 (8th Cir. 1990) (finding waiver where defendant raised personal jurisdiction defense in manner that was technically timely, but late in trial proceedings). For example, if a defendant were to engage in "sandbagging" by raising the issue of personal jurisdiction on a motion to dismiss, deliberately refraining from pursuing it any further when his motion is denied in the hopes of receiving a favorable disposition on the merits, and then raising the issue again on appeal only if he were unhappy with the district court's ultimate decision, then we would not hesitate to find that the defendant had waived any right to pursue the defense. *See Yeldell*, 913 F.2d at 539. In the present case, however, plaintiffs have not argued, or even suggested, that defendants engaged in such deliberate, strategic behavior, nor did the district court make any such

finding. Nonetheless, plaintiffs ask us to hold that defendants' inaction on the issue of personal jurisdiction after the denial of their motion to dismiss, without more, constitutes a waiver of the issue for purposes of appeal in this case.

The rule that plaintiffs urge upon us could have the consequence that filing a motion under Rule 12 not only would not necessarily suffice to preserve an objection to personal jurisdiction on appeal, but that it would never suffice in a case that proceeds to a decision on the merits. We hesitate to adopt such an unyielding rule, which might derogate from the baseline standard that Rule 12 itself establishes. In most cases where courts of appeals have found a defendant to have waived its right to pursue a defense of personal jurisdiction on appeal, even though the defendant raised the issue in a motion or responsive pleading, other factors have been present that militated in favor of such a finding. *See, e.g., Rice v. Nova Biomedical Corp.*, 38 F.3d 909, 915 (7th Cir. 1994) ("fiduciary shield" defense to personal jurisdiction found to be waived where defendant failed to make evidentiary arguments of any sort and declined to renew issue when invited to do so by court); *Continental Bank, N.A. v. Meyer*, 10 F.3d 1293, 1296-97 (7th Cir. 1993) (affirming district court's explicit finding that defendants' conduct during litigation amounted to waiver of personal jurisdiction defense); *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990) (finding waiver where defendants failed to raise personal jurisdiction defense in motion, raised issue for first time in answer, and then failed to pursue issue any further).

We decline to adopt such a rule. Rather, we simply join our sister circuits, *See Brownlow v. Aman,* 740 F.2d 1476, 1483 n.1 (10th Cir. 1984); *Adden v. Middlebrooks*, 688 F.2d 1147, 1156-57 (7th Cir. 1982), in finding that the minimum requirements of Rule 12 are satisfied when a defendant raises the issue of personal jurisdiction in a timely motion to dismiss. In the absense of other factors militating in favor of a finding of waiver, this suffices to preserve the issue of personal jurisdiction for appeal. Since there are no such additional factors in this case, we find that defendants did not waive their right to appeal the issue.

2.

We must now determine what evidentiary standard the district court's exercise of personal jurisdiction should be measured against, given the posture in which the claim reaches us on appeal. As will be apparent, our conclusion that defendants have not completely waived the defense of personal jurisdiction does not mean that no adverse consequences flow from their failure to contest the issue following the denial of their motion to dismiss.

Defendants correctly point out that plaintiffs, in opposing the motion to dismiss, were only required to make, and only made, a prima facie showing that personal jurisdiction was proper. Defendants also point out, correctly, that plaintiffs would have borne the heavier burden of prevailing on the jurisdictional issue by a preponderance of the evidence if the issue had been contested at trial. *See Rano*

v. Sipa Press, 987 F.2d 580, 587 n.3 (9th Cir. 1993); *Sinatra v. National Enquirer*, 854 F.2d 1191, 1194 (9th Cir. 1988). From these two solid premises, however, defendants reach an erroneous conclusion. They claim that, despite their failure at trial to put plaintiffs to the test of meeting a preponderance standard on the jurisdictional issue, defendants can prevail on appeal if the existing record does not support a finding, by a preponderance of the evidence, that jurisdiction is proper. That is, defendants claim that the burden rested with the plaintiffs to pursue the jurisdictional issue proactively during trial in order to develop a record that could satisfy a preponderance standard, despite defendants' failure to contest the issue further after losing their motion. This is incorrect.

The rule that a party must raise a defense at trial or waive the right to pursue it on appeal is based on the proposition that parties should develop a full record on all contested issues and afford the district court an opportunity to rule on those issues before they may enjoy the benefit of appellate review. *See Hormel v. Helvering*, 312 U.S. 552, 557-59 (1941); *Romain v. Shear*, 799 F.2d 1416, 1419 (9th Cir. 1986) (declining to reach new issue where "facts relevant to [question at issue] are not fully developed"). In this case, none of the parties developed a record on the issue of personal jurisdiction beyond the few submissions each made in litigating the defendants' motion to dismiss. From the plaintiffs' perspective, there must have seemed little reason to do so: Plaintiffs prevailed on the personal jurisdiction question on pretrial motion, and defendants did not contest

the issue any further. Defendants cannot now capitalize upon the plaintiffs' early victory. Rather, defendants may seek appellate review only of the issue that they actually contested below: whether or not plaintiffs made out a prima facie case for personal jurisdiction, and whether the district court was correct in denying the motion to dismiss. This rule has been implicit in cases, in this circuit and others, where a defendant has appealed an adverse decision on personal jurisdiction after contesting the issue only in the context of a motion to dismiss. *See, e.g., Rano v. Sipa Press*, 987 F.2d 580, 587 n.3 (9th Cir. 1993); *Brownlow v. Aman*, 740 F.2d 1476, 1483 (10th Cir. 1984).[3] We now adopt that rule explicitly. Having failed to contest the issue further after losing their motion to dismiss, defendants may appeal only the district court's holding that plaintiffs made out a prima facie case sufficient to support an exercise of personal jurisdiction.

3.

Having thus narrowed the issue before us, we now affirm the district court's exercise of personal jurisdiction over the defendants. In order to support an exercise of specific personal jurisdiction, plaintiffs must demonstrate that defendants had purposeful contacts with California, that the

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[3]We note that a different situation may be presented when a defendant enters a special appearance for the sole purpose of contesting jurisdiction in a separate hearing and otherwise refuses to participate in the litigation. *See, e.g., Sinatra v. National Enquirer*, 854 F.2d 1191, 1192-94 (9th Cir. 1988).

present cause of action arose out of those contacts, and that exercising jurisdiction over defendants would not be unreasonable. *See Roth v. Garcia Marquez*, 942 F.2d 617, 620 (9th Cir. 1991); *Sinatra v. Nat'l Enquirer*, 854 F.2d 1191, 1195 (9th Cir. 1988). In support of their position before the district court, plaintiffs offered a series of licensing agreements that defendants entered into during the 1980s and early -90s with Warner Special Products ("Warner") that granted Warner permission to use the "Louie, Louie" Masters, and documents suggesting that defendants made similar agreements with Rhino Records. The licensing agreements and some accompanying letters describe Warner as being "of . . . Burbank, CA," and the Rhino documents describe Rhino's location as "Santa Monica, CA." These documents give rise to a strong inference that defendants engaged in negotiations with California companies that resulted in the granting of licenses for the use of "Louie, Louie," that they probably wrote letters and made telephone calls to the California offices of these companies in conducting their negotiations, that they quite possibly traveled to California as a part of these negotiations, and that the licenses may actually have been granted (i.e. the contracts formed) in California.

If these purposeful contacts did occur, then they would suffice to support an exercise of specific personal jurisdiction. Contract negotiations are classic examples of the sort of contact that can give rise to in personam jurisdiction, *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985); *McGee v. International Life Ins.*, 355 U.S. 220, 222-23

(1957); *Corporate Invest. Bus. Brokers v. Melcher*, 824 F.2d 786, 789 (9th Cir. 1987), and the Kingsmen's cause of action "arises out of" those contacts, as it is the failure of the defendants to provide royalties on these and other licensing agreements that serves as the basis for plaintiffs' suit. There is nothing exceptional on the face of this case that would suggest that exercising jurisdiction over defendants in a forum where they took actions that allegedly constituted a breach of the contract at issue in the case would unduly burden either the parties or the interests of any forum. *See Roth*, 942 F.2d at 623. Thus, the district court was correct in concluding that the licensing agreements suffice to make out a prima facie case supporting the exercise of personal jurisdiction over defendants for purposes of this suit.

Had defendants pursued their defense further after losing their motion to dismiss, perhaps they could have rebutted, by a preponderance of the evidence, the inferences to which the licenses give rise. Having failed to pursue the issue below, however, defendants may not now enjoy the benefits of this higher evidentiary standard on appeal. We therefore affirm the district court's exercise of in personam jurisdiction over defendants.

B.

Defendants also contend that the district court erred in holding that the statute of limitations does not bar a remedy of rescission in this case. In California, the statute of limitations for an action seeking rescission of a contract is

four years. *See* Cal. Code Civ. Proc. § 337. Specifically, the statute provides that an aggrieved party must commence such an action within four years "from the date upon which the facts that entitled the aggrieved party to rescind occurred." *Id.* Both parties agree that the period of limitations has long since run with respect to the first occasions on which defendants breached their agreement. Both parties also agree that defendants have breached their agreement repeatedly over the course of the past thirty years, and did so, repeatedly, within four years of the time that plaintiffs commenced this action. Defendants' claim is that, even in the face of multiple and continuing breaches of the agreement, the California statute should be read to bar any action that is not commenced within four years of the first occasion on which an aggrieved party could have requested rescission. Defendants cite no authority for this proposition, and we reject it.

In analyzing requests for rescission where there have been multiple breaches under an installment contract, California courts have held that each breach starts the clock afresh for statute of limitations purposes. In *Conway v. Bughouse, Inc.*, 105 Cal. App. 3d 194 (1980), for example, a California appeals court looked to the manner in which money would be paid under a pension contract in determining how a party's failure to make any given payment should affect the tolling of the statute of limitations.

> The total amount of money to be paid to[the pensioner] is not a fixed sum which is to be paid out over a period of time. To the

> contrary, the total amount owed is unascertainable until the date of [the pensioner's] death because each payment is separate and contingent upon [the survival of the pensioner and his adherence to the terms of the contract]. As each payment is separable from the others and is not a part of a total payment, the agreement should logically be considered an installment contract for purposes of determination of the application of the statute of limitations.

Id. at 199-200. The same holds true in the present case: There is no fixed amount to be paid out over time under the Kingsmen's contract, but rather a continuing obligation to pay a portion of the profits and royalties on "Louie, Louie" as the recording gets used over time.

The district court in this case made it clear that, in determining whether rescission was warranted and appropriate, it was relying upon breaches that had occurred within the limitations period. To find for defendant under these circumstances would be to hold that California law forever bars a party from seeking a remedy of rescission after it has once passed up the opportunity to do so, regardless of the nature of any future breaches of the other party's obligations. We have found no authority that would support such a reading of California law. We therefore affirm the district court's conclusion that the statute of limitations does

not bar rescission of the contract in this case.

C.

Defendants have raised a host of arguments on appeal concerning prejudice they claim they will suffer as a result of the rescission, alleged threats to the rights of third parties, and actions allegedly taken by the Kingsmen's former agent that, defendants claim, raise an equitable bar to rescission. They failed to raise any of these arguments before the district court. We apply a "general rule" against entertaining arguments on appeal that were not presented or developed before the district court. *Bolker v. Commissioner of Internal Revenue*, 760 F.2d 1039, 1042 (9th Cir. 1985). There are three exceptions to this rule: (1) "in the `exceptional' case in which review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process," (2) "when a new issue arises while appeal is pending because of a change in the law," or (3) "when the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed." *Id.* (citations omitted). None of these exceptions apply to the instant case. Defendants' newly minted arguments are all inherently factual in nature; none depends upon a change in the law applicable to this dispute; and none must be heard in order to prevent a miscarriage of justice. We therefore find that defendants have waived these argumen ts, and we will not consider them.

III. The Declaratory Action

The district court issued a declaration that the judgment of rescission entitles plaintiffs to all post-rescission licensing income from the Masters, even post-rescission income from licenses originally granted before the date of rescission. Defendants claim that the district court's ruling violates the principle of res judicata. At first blush, this claim seems somewhat unusual, as it was defendants who initiated this declaratory action, asking for a declaration, on the merits, that plaintiffs were not entitled to the licensing income. Ordinarily, it is the party resisting a claim for relief, rather than the party initiating the claim, who asserts that his opponent is barred from recovering because the disputed matter is res judicata. Res judicata is a waivable defense. *See* Fed. R. Civ. Proc. 8(c). Thus, as an initial matter, we must decide whether defendants have waived any res judicata objections.

In a declaratory action, of course, the definitions of "claimant" and "respondent" are effectively reversed. Frequently, the point of a declaratory action is to assert a defense anticipatorily, and a defense of res judicata may serve as the basis for a declaratory action as well as any other affirmative defense. If defendants had styled this action as a request for a declaration that any claim of right the Kingsmen might assert to the disputed licensing income is barred by the doctrine of res judicata and cannot be heard on the merits by any court, then they would not face any problem of waiver. But that is not what defendants did. Defendants requested a declaration affirmatively asserting that they had a right to the

disputed licensing income and that plaintiffs had no right to that income. They raised their res judicata argument only in response to plaintiffs' motion for summary judgment. Thus, rather than saying, "we wish the court to declare that the judgment of rescission bars it from making any ruling on the licensing income because the matter is res judicata," defendants said, "we wish the court to declare that the licensing income belongs to us, and, incidentally, you have no choice but to grant us such a declaration, because res judicata bars plaintiffs from opposing the merits of our position. " This they cannot do. By requesting a declaration, on the merits, that they are entitled to the very licensing income that is in dispute, defendants have waived the right to assert any defense of res judicata that they might have had.

Moreover, even if defendants had not waived the right to assert the defense, their res judicata argument would fail on the merits. California employs a doctrine of "primary rights" in administering the doctrine of res judicata. *See Slater v. Blackwood*, 15 Cal.3d 791, 795 (1975); *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1438 (9th Cir. 1985). "Under California law, [a] claim arises from the harm suffered, as opposed to the particular theory of the litigant. Even when multiple legal theories for recovery exist, one injury gives rise to only one claim for relief." *Eichman*, 759 F.2d at 1438. In their attempt to fit their claim within the California res judicata doctrine, defendants characterize the disputed licensing income as "consequential damages" that plaintiffs "could have sought" in the original action for rescission,

arguing that the two actions involved the same "primary rights." This is incorrect. The first suit involved the Kingsmen's primary contractual rights, which defendants violated by not paying them royalties; the second suit involved the Kingsmen's (newly-acquired) primary ownership rights, which defendants violated by continuing to appropriate (and hence, by misappropriating) the licensing income from the Masters. The disputed licensing income does not constitute "consequential damages;" it is a part of the property rights enjoyed by the owner of the Masters, an incident of the ownership rights that plaintiffs were awarded in the first action. The doctrine of res judicata is no bar to the declaratory judgment entered by the district court.[4]

On the merits, the district court found that the rescission of the Kingsmen's contract was effective as of the date of the filing of the Kingsmen's complaint. We agree. Under California law, "a party to a contract [can] rescind it and . . . such rescission [can] be accomplished by the rescinding party by giving notice of the rescission and offering to restore everything of value which [the rescinding

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[4]Defendants also claim that a material issue of fact exists as to whether plaintiffs, in the action for rescission, waived the right to recover the "consequential damages" of the disputed licensing income. The district court correctly found that no issue of material fact exists on this question. Furthermore, as our holding makes clear, the licensing income is not "damages" and so could not have been comprised in any "waiver of a right to seek damages" in any event.

party has] received." *Runyan v. Pacific Air Indus.*, 2 Cal.3d 304, 311 (1970); see also id. at 311-13. When a party gives notice of rescission, it has effected the rescission, and any subsequent judicial proceedings are for the purpose of confirming and enforcing that rescission. See *id.* at 311-12. Thus, when the Kingsmen filed suit in 1993, they rescinded the contract and became owners of the Masters. The lawsuit that followed confirmed that their rescission was a proper one and resulted in an order enforcing that rescission. The district court correctly ruled that, as the owners of the Masters, the Kingsmen are entitled to all income derived from the exploitation of the recordings following September 29, 1993, the date of the notice of rescission.

IV. The Contempt Proceedings

A.

Defendants object to the contempt citation issued by the district court. First, they claim that the district court erred in finding that contempt was warranted at all. We review the district court's order for abuse of discretion. *See In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). Beyond finding contempt, the district court may impose a sanction for the contempt only if it finds that the party requesting the sanction has proven contempt by clear and convincing evidence. *See id.; Vertex Distrib. v. Falcon Foam Plastics*, 689 F.2d 885, 889 (9th Cir. 1982).

We address first the contempt citation. An appellate

court should not reverse a finding of contempt "unless[it has] a definite and firm conviction that the district court committed a clear error of judgment after weighing the relevant factors." *In re Dual-Deck*, 10 F.3d at 695. The district court found that two aspects of defendants' conduct warranted the contempt citation. First, it found that GML and Gusto had not returned the Masters to the Kingsmen within thirty days of the date of judgment, as the judgment requires, nor had they taken any reasonable steps whatsoever to comply with that requirement. Second, the court found that GML, Gusto, Highland and Hawkins had continued to pursue, negotiate and enter into licenses for the use of the Masters, despite the clear import of the judgment that they no longer owned the rights to the Masters and should cease such activities. It also found that they had refused to provide an accounting of these activities to the Kingsmen when asked. Indeed, the court found that the defendants had made no good faith efforts to comply with the demands of the judgment at all, but rather had deliberately and contemptuously flouted the court's authority.

The district court did not abuse its discretion in arriving at these conclusions. Far from it. Defendants do not even attempt to dispute that they failed to return the Masters for more than a year following the judgment, nor that they entered into various third-party licenses after the district court ordered the rescission. Rather, they offer various excuses as to why their repeated refusals to comply with the judgment were not their fault and should be excused. But "there is no

good faith exception to the requirement of obedience to a court order," *In re Dual-Deck*, 10 F.3d at 695, nor, indeed, is there evidence in this case of good faith on the part of defendants in any event. The district court offered convincing reasons, supported by the record, for finding all of the defendants' excuses entirely unconvincing. Defendants' excuse for not returning the Masters promptly, for example, was a professed concern for not shipping the fragile tapes in a manner that would expose them to rough handling or extreme temperatures that might jeopardize their safety. However, when the district court finally ordered the defendants to deliver the Masters forthwith, defendants simply put them in a cardboard box and shipped them via standard UPS, despite the plaintiffs willingness to make any reasonable accommodations to ensure the Masters' safety during shipping and storage. Defendants' other explanations for their actions are similarly unconvincing.

Nor did the district court abuse its discretion in applying its contempt citation to Highland and Hawkins. Highland and Hawkins were not parties to the underlying action. However, Federal Rules of Civil Procedure 70 and 71 provide for the enforcement of judgments against non-parties in limited circumstances. "Rule 71 was intended to assure that process be made available to enforce court orders in favor of and against persons who are properly affected by them, even if they are not parties to the action." *Westlake North Property Owners Ass'n v. Thousand Oaks*, 915 F.2d 1301, 1304 (9th Cir. 1990). "[T]o be held liable in contempt, it is necessary

that a non-party respondent must either abet the defendant [in violating the court's order] or be legally identified with him," *NLRB v. Sequoia District Council of Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977) (quotation omitted), and that the non-party have notice of the order, *see id. See also Stotler & Co. v. Able*, 870 F.2d 1158, 1164 (7th Cir. 1989); *Quinter v. Volkswagen of America*, 676 F.2d 969, 972-73 (3d Cir. 1982). Highland and Hawkins certainly had notice of the contents of the judgment for rescission, a fact they do not deny, and evidence concerning their licensing activities amply supports a finding that they flagrantly and deliberately aided and abetted GML and Gusto in violating the express terms of the judgment, granting licenses when they had previously stipulated that GML would transfer no rights to Highland pending the outcome of the dispute and continuing to do so following the judgment, when, as Highland knew, GML and Gusto no longer owned the rights to the Masters. This evidence is sufficient to support a finding of contempt against Highland and Hawkins, even though they were not parties to the underlying action.

B.

Defendants next argue that the district court employed improper procedures in imposing its contempt sanctions. The district court initiated the contempt proceedings by issuing an order to show cause why defendants should not be sanctioned. It then elicited affidavits and extensive briefing on the issue from all parties. It did not, however, hold a full-blown

evidentiary hearing at which the parties could present live testimony (a step that neither of the parties requested); rather, the district court issued its contempt sanctions at the close of the hearing at which the parties argued the order to show cause. Defendants claim that the failure to hold a full-blown hearing is a denial of due process that invalidates the sanctions the district court imposed against them.

Defendants are correct that a district court ordinarily should not impose contempt sanctions solely on the basis of affidavits. *See Hoffman et al. v. Beer Drivers & Salesmen's*, 536 F.2d 1268, 1276-77 (9th Cir. 1976). However, where, as here, the affidavits offered in support of a finding of contempt are uncontroverted, we have held that a district court's decision not to hold a full-blown evidentiary hearing does not violate due process. "A trial court may in a contempt proceeding narrow the issues by requiring that affidavits on file be controverted by counter-affidavits and may thereafter treat as true the facts set forth in uncontroverted affidavits. That is what the trial court did here." *Hoffman*, 536 F.2d at 1277. Indeed, in *Thomas, Head and Greisen Employees Trust v. Buster*, 95 F.3d 1449 (9th Cir. 1996), we rejected arguments very similar to the ones defendants raise.

> [Appellants] argue that the [district] court merged into one action [-- an order-to-show-cause hearing --] what should have been a five-step process: (1) deciding whether to grant plaintiffs' motion to show cause; (2) issuing the show cause order; (3)

> providing a hearing; (4) making a finding of contempt on the basis of affidavits and other evidence; and (5) determining and imposing sanctions.

Id. at 1458. As we explained, the procedural steps that the appellants in *Thomas, Head* requested, and that defendants demand here, were not requirements whose elimination would violate due process.

> We find that [appellants] had ample notice and an opportunity to respond to the possibility that the court would find them in contempt. The district court expressly requested briefing in response to . . . [appellees' motion, and appellants] presented no admissible evidence to support their claim that they could not comply with the injunction. Although the district court did not set an evidentiary hearing on the contempt issue, the record reflects that [appellants did not ask] for such a hearing . . . . Given these facts and the overwhelming evidence supporting [a finding of contempt,] we think it is clear that the district court's actions did not constitute a denial of due process.

Id. Defendants have not described any new evidence that they could present at a hearing, nor any existing evidence that they

would challenge, if such a hearing were to be ordered. The district court's decision not to hold a full-blown evidentiary hearing before imposing sanctions did not deny due process of law to the defendants.

C.

Finally, Hawkins argues that he never received adequate notice that he was being placed in personal jeopardy in the contempt proceedings against Highland, GML and Gusto. Rather, he argues that the first mention that anyone made of Hawkins being personally bound by the contempt proceedings was when the district court issued its proposed findings of fact and law in support of a finding of contempt and requested comments and objections from the parties. Hawkins argues that it would deprive him of due process of law to hold him in contempt or to sanction him personally without having afforded him notice that not only his company, but he personally, was being placed in jeopardy.

Whatever merits Hawkins' claim might have, he failed to raise this objection in the district court. It is not disputed that Hawkins was present throughout the proceedings and participated actively in Highland's defense. When the district court named Hawkins in the proposed findings of fact and conclusions of law made as the foundation of its contempt order, Hawkins could and should have objected to the district court's failure to give him notice that he would be personally bound by the proceedings. He failed to do so, even though Highland and the other defendants submitted objections to the

proposed findings that repeatedly argued, on the merits, that "Mr. Hawkins, as an individual," should not be held in contempt. Neither Hawkins nor, indeed, the defendants offered any excuse for failing to raise the argument of lack of notice to Hawkins.

Infirmities to the notice afforded a defendant in a civil action are waivable. See Fed. R. Civ. Proc. 12(h)(1) ("A defense of . . . insufficiency of process . . . is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading.") In the unusual situation presented here, we find the most sensible application of Rule 12 to require that Hawkins have raised any objection of lack of notice in the extensive objections to the proposed findings of fact and conclusions of law that defendants filed before judgment was entered, which was, functionally, a "responsive pleading" to the district court's expressed intention to bind Hawkins personally to the contempt proceeding. While defendants raised a wide variety of arguments on their own and purportedly on Hawkins' behalf in their objections, they made no mention of Hawkins' claims of lack of notice that he would be personally bound by the contempt proceedings. We therefore find that Hawkins has waived any objections on that score.

CONCLUSION

The district court's rulings in these consolidated actions are well-reasoned and supported by ample evidence in the record. We affirm in all respects.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD PETERSON, et al.,	)
Plaintiffs	) No. CV93-4672
vs.	) MEMORANDUM
HIGHLAND MUSIC, INC., et al.,	) ORDER
Defendants.	)
	)

The plaintiffs in this case seek to rescind several recording contracts entered into in the 1960's. After a bench trial, the matter was taken under submission so that the parties a could prepare post-trial brief lieu of closing argument.[1]

FACTUAL BACKGROUND

The plaintiffs are members of a recording group called "The Kingsmen." Beginning in 1963, The Kingsmen entered into a series of recording contracts, pursuant to which 102 recordings (the "Masters") were produced. (Exhibit 48) The Masters are now owned by defendant G.M.L., Inc. ("G. M.L.") According to the plaintiffs, G.M.L. and its predecessors have materially breached the recording

[1]In their post-trial briefs, the parties have addressed several issues (e.g., statute of limitations, adverse possession) on which the Court has already ruled. Except as modified by this order, the rulings made by the Court at trial shall stand.

contracts. In particular, the plaintiffs claim that the defendants have account and pay royalties. The plaintiffs therefore seek to rescind the recording contracts and recover possession of the Masters.

DISCUSSION

A. Choice of Law.

Federal courts ordinarily apply the choice of law rules of the state in which they sit. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941); *Consul Ltd. v. Solide Enterpries, Inc.*, 802 F.2d 1143, 1146 (9th Cir. 1986). In deciding choice of law issues generally, the California courts apply the "governmental interest" test. *See Reich v. Purcell,* 67 Cal2d 551, 63 Cal.Rptr. 31 (1967); *American Bank of Commerce v. Corondoni*, 169 Cal.App.3d 368, 215 Cal.Rptr. 331, 333 (1985); *Ashland Chemical Co. v. Provence*, 129 Cal.App.3d 790, 181 Cal.Rptr. 341 (1982). Where there is a contractual choice of law provision, California courts follow § 187 of the Restatement (Second) of Conflict of Laws (1971) Nedlloved Lines B.V. v. Superior Court, 3 Cal.4th 459, 466, 11 Cal.Rptr.2d 330, 334 (1992).

This lawsuit has generated considerable confusion among the parties regarding choice of law. Nevertheless, as noted below, Court finds that the Law of the various states implicated by the parties is the same in all aspects relevant to the outcome of this case. Thus, no extensive choice of law analysis is necessary.

B. *The Contracts.*

The Masters were recorded pursuant to several contracts. The first four contracts were between The Kingsmen and Jerden Records ("Jerden"), a company owned by Jerry Dennon. (Exhibits 4, 14-16). Under those contracts, The Kingsmen produced recordings for Jerden in exchange for royalties. Jerden, in turn, entered into a series of contracts with Scepter Music, Inc. ("Scepter") , transferring the Masters to Scepter. (Exhibits 1-5). Pursuant to those contracts, Scepter owed Jerden a duty to account and pay royalties. Jerden, in turn, owed a duty to account and pay royalties to The Kingsmen. In 1968, The Kingsmen entered into the last contract at issue here, this time directly with Scepter. This contract required Scepter to account and pay royalties to The Kingsmen.

Pursuant to the foregoing contracts, Scepter took title to the Masters. After a series of sales, the Masters were purchased by defendant G.M.L. As Scepter's successor-in-interest, G.M.L. stands in Scepter's shoes. (R.T., Vol. I, pg. 11:7-9). By an assignment, plaintiffs stand in the shoes of Jerden and Jerry Dennon. (Exhibit 43) Asserting Jerden's rights, the plaintiffs seek to rescind the contracts through which Jerden transferred its rights to Scepter. (Exhibits 1-5).[2]

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[2]One of those agreements, Exhibit 2, is a contract between Jerden and Scepter, pursuant to which Scepter obtained the rights to"Louie Louie" and "Haunted Castle," two of The Kingsmen's most valuable songs. Defendants have argued that there is no contract between The Kingsmen and Jerden with regard to those songs, and

Asserting their own rights, plaintiffs wish to rescind the 1968 contract, in which the remaining Masters were sold directly to Scepter. (Exhibit 6).

C. The Parties.

Some of the original members of The Kingsmen who were parties to the various recording contracts subsequently left the group, and are not plaintiffs in this action. The defendants argue that these former members are indispensable parties who must be joined under Fed. R. Civ. P. 19(a)(2). Under the first set of contracts, the rights to the masters flowed from The Kingsmen to Jerden, and from Jerden to Scepter. Scepter owed a duty to account and pay royalties to Jerden, which in turn owed a duty to account and pay royalties to the plaintiffs. Thus, as to the songs recorded under the first set of contracts, plaintiffs are asserting Jerden's rights against G.M. L. As noted above, Dennon and Jerden assigned those rights to the plaintiffs in 1993. (Exhibit 43).[3] As to the 1968

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thus there is no contract for plaintiffs to rescind. As noted above, Jerden has assigned its rights to the plaintiffs. (Exhibit 43). Plaintiffs, asserting Jerden's rights, may rescind Exhibit 2, regardless of whether there was any contract between The Kingsmen and Jerden with regard to "Louie Louie" and "Haunted Castle."

[3]The defendants argue that claims for rescission are not assignable. *Soderberg v. Gens*, 652 F.Supp. 560 (N.D.Ill. 1987). The case cited by the defendants in that regard is a district court case from Illinois, and therefore is not binding. In any event, that

contract, between Scepter and The Kingsmen, all of the members of the group who were parties to the contract are parties to this lawsuit. Thus, they are clearly the proper parties to rescind the contract.

D. Grounds for Rescission.

1. Choice of Law.

As noted above, this lawsuit has generated a great deal of confusion regarding choice of law. As to plaintiffs, grounds for rescission, the parties have focused on New York and California law.[4] This choice of law inquiry is simplified, however, by the fact that the law of California and New York is essentially the same with regard to the grounds for rescission.

In California, a party may unilaterally rescind a contract if there is a material breach by the other party. Cal. Civ. Code §689(b)(2)

A material breach is one that is so dominant or

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case addressed the assignability of the right to rescind a fraudulent securities sale under federal law. As such, it is not persuasive. In California, where plaintiffs brought their claim, a "chose in action," including a right arising out of a contractual obligation, is assignable. *See* Cal. Civ. Code §§ 954, 1458.

[4]In that regard, the Court notes that the most important recording contract, pursuant to which Jerden transferred the rights to "Louie Louie" and "Haunted Castle" to Scepter, contains a choice of law provision implicating the law of New York. (Exhibit 2, ¶ X). None of the remaining agreements contains a similar provision.

> pervasive as in any real or substantial measure to frustrate the purpose of the undertaking. If a breach does not go to the root of the matter and can be readily compensated in damages, a party may not rescind.

Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1530 (9th Cir. 1993) (citations and internal quotations omitted).

Under New York law, a party may rescind where he has suffered "breaches of so material and substantial a nature that they affect the very essence of the contract and serve to defeat the object of the parties." *Affiliated Hosp. Prod., Inc. v. Merdel Game Mfg. Co.*, 513 F.2 1183, 1186 (2nd Cir. 1975) (quoting *Nolan v. Williams Music Co.*, 300 F.Supp 1311 (S.D.N.Y. 1969). *aff'd sub nom. Nolan v. Sam Fox Publishing Company, Inc.*, 499 F.2d 1394 (2nd Cir. 1974)) *See also Canfield v. Reynolds*, 631 F.2d 169, 178 (2nd Cir. 1980) (citing *Nolan*). Rescission is not available where the breach did not go to the "root of the contract" *Id.*

Given the similarity of the standards for rescission under New York and California law, the result in this case would he the same in either state.

2. Materiality of the Breach.

Pursuant to the relevant contracts (i.e. , the contracts by which Scepter obtained the Masters), G.M.L. and its predecessors owed a duty to account and pay royalties to Jerden (and, in some cases, directly to plaintiffs). At trial, defendants stipulated that no one in G.M.L.'s chain of title

made any royalty payments. (R.T. , Vol. I, pg. 14:7-8).[5] Defendants also stipulated that there have been numerous uses of the Masters since the 1960's, for which royalties would have been due. (R.T., Vol. 1, pp. 12:5-6; 14:23-15:2). Finally, defendants admitted that G.M.L. had not rendered an accounting within the applicable statute of limitations, and that no royalty statements were sent for 30 years. (R. T. , Vol. IV, pg. 471:18-25; Vol. II, pg. 74:G-7).

In light of the stipulated facts, it is clear that there has been a breach sufficient to justify rescission under either New York or California law. G.M.L. and its predecessors had a duty to account and pay royalties; they had no other duties. Defendants stipulated that royalties were due, no royalties were paid, and no accounting rendered. This amounts to a total breach of the contracts. Such a breach is clearly material enough to justify rescission. *Cf. Nolan v. Sam Fox Publishing Co. Inc.*, 499 F.2d 1394, 1399 (2nd Cir. 1974) ("[A]n essential objective of a contract between a composer and publisher is the payment of royalties, and a complete failure to pay means this objective has not been achieved."); *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1530-31 (9th Cir. 1993) (no rescission where the defendant escrow account pending litigation, and kept accurate records of the amounts

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[5]Counsel for the defendants later said: "The fact is no money was paid; it's undisputed. Not a single dime for 30 years." (R.T. Vol. II, pg. 74:2-4).

due).[6]

E. Laches.

1. Choice of Law.

The parties have argued at various times that either New York or California Law applies to the defendants' affirmative defense of laches. As with the grounds for rescission, the Court finds that the law of both states is the same. Under California law, relief based on rescission "shall not be denied because of delay in giving notice of rescission unless such delay has been substantially prejudicial to the other party." Cal. Civ. Code § 1693 (emphasis added); Witkin, *Summary of California Law, Contracts* § 892, pg. 799 (9th ed. 1987).[7]

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[6]The defendants argue that only $270.00 in royalties were actually due. According to the defendants, the failure to pay such a small amount cannot be a "material" breach. This argument misses the point. Because the defendants failed to perform any of their duties under the contracts, the amount of royalties actually due is irrelevant. The total failure of consideration on the part of the defendants frustrated the purpose the contract. *Cf. Nolan, supra.* This argument also contradicts defendants' position at trial that the failure to account was, by itself, a material breach, even if no royalties were due. (R.T. Vol. II, pp. 81:13-83:7)

[7]Defendants argue that the prejudice requirement is part of an alternative test requiring either prejudice or acquiescence in the breach. *See Conti v. Board of Civil Service Commissioners*, 1 Cal.3d 351, 359, 82 Cal.Rptr. 337, 342 (1969); *Asian Investment Co., Ltd. v. Borowski*, 133 Cal.App.3d 832, 838, 184 Cal.Rptr. 317, 322 (1982); *Chemical Specialties Manufacturers v. Deukmejian*,

Similarly, New York requires a defendant claiming laches to prove prejudice as well as delay. *See Airco Alloys Div. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68, 82, 430 N.Y.S.2d 179, 187 (4th Dep't 1930) ("Laches bars recovery where a plaintiff's inaction has prejudiced the defendant and rendered it inequitable to permit recovery."); *Western Elec. Corp. v. York City Transit Auth.*735 F.Supp. 1205, 1224 at fn. 20 (S.D.N.Y. 1990). Thus, the law of both states is the same as to the elements of laches; prejudice as well as delay must be established.[8]

Unlike the California Civil Code, which explicitly

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227 Cal.App.3d 663, 672, 278 Cal.Rptr. 123, 134 (1991); *County of Fresno v. Fair Employment and Housing Commission*, 226 Cal.App.3d 1541, 1556, 277 Cal.Rptr. 557, 567 (1991). None of the cases cited by the defendants involves rescission. Rather, those cases discuss laches in different contexts. In spite of the defendants' argument to the contrary, § 1693, which specifically applies to rescission, controls. Cases which discuss laches in different contexts are not applicable.

[8]The defendants argue that delay creates a presumption of prejudice. The cases cited by the defendants in that regard are inapplicable, because they involve federal rather than state law causes of action. *Jackson v. Axton*, 25 F.3d 834 (9th Cir. 1994) (copyright); *International T. & T. Corp. v. General T. & E. Corp.*, 518 F.2d 913 (9th Cir. 1975) (Clayton Act); *Boone v. Mechanical Specialties*, 609 F.2d 956 (9th Cir. 1979) (Title VII); *Lemmon v. Santa Cruz County, Cal.*, 686 F.Supp. 797 (N.D.Cal. 1988) (Veterans Reemployment Rights Act). The case at bar, involving a state law contract claim, is not governed by the law of laches relating to federal causes of action.

requires "substantial prejudice," the New York cases cited by the parties, and those examined by the Court in the course of its own research to not specify the degree of prejudice necessary to prove laches. Nevertheless, the New York, courts repeatedly note that laches is annable equitable defense, and that unreasonable delay by the plaintiff bars recovery where such delay "render[s] it inequitable to permit recovery." *Airco, supra* 76 A.D.2d at 82, 430 N.Y.S.2d at 18 If the New York courts were to identify the degree of prejudice needed to prove laches defense, they would certainly require "substantial" prejudice. Insubstantial prejudice is not the kind of prejudice which would "render[] it inequitable to permit recovery." Thus, in the Court finds that the law of laches is essentially the same in New York and California.

2. Delay.

At trial Court found that plaintiffs delayed unreasonably in bringing their claim for rescission. (R.T., Vol. III, pp.402:4-403:19). The defendants have therefore established the first prong of their laches defense.

3. Prejudice.

(a) The Value of the Kingsmen Masters.

G.M.L. obtained the Kingsmen Masters in 1984, when it bought a catalog of over 10,000 recordings from a company called Koala for $500,000. (R.T. , Vol. IV, pp. 513:17-25; 517:8-19; 5 -13). Of the approximately 10,000 recordings in

the Koala catalog, 200-250 were considered "valuable" by G.M.L. (R.T., Vol. IV, pg. 517:15-19). When asked how many of the Kingsmen Masters would be within the 200-250 "valuable" records, G.M.L.'s vice president, Stephen Kountzman, testified that "Louie Louie" "might" be one of them, but he would not say that all 102 Kingsmen Masters were "valuable." (R.T., Vol. IV, pg. 536:18-22)(emphasis added). In fact, counsel for the defendants asserted that "Louie Louie probably comprises 95 hereto 98 percent of the income here. The other [Kingsmen] songs didn't generate much money . . . ." (R.T. Vol. IV, pg- 425:18-20). In light of the defendants' testimony and argument, it is clear that of the Kingsmen Masters, only "Louie Louie" had any real value to G.M.L. Assuming that the $500,000 purchase price reflects the value of the 200-250 "valuable" masters, the single "valuable" Kingsmen Master accounted for approximately $2,000-$2,500 of the purchase price, if the Koala catalog is evaluated on a pro rata basis.[9]

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[9]This range of figures represents the total purchase price of $500,000 divided by the range of "valuable" recordings, 200-250. The Court recognizes the many limitations inherent in this pro rata method of evaluation. For example, it does not take into account potential differences between the 200-250 "valuable recordings," and it ascribes no value at all to the remaining 9,750-9,800 songs. However, lacking any more reliable benchmark, *see supra*, the Court adopts the pro rata evaluation as a rough estimate. The only other alternative is to find that there is not enough evidence regarding the value of the Masters, and that G.M.L. has not met its burden of showing prejudice because it has failed to quantify

The defendants object to the evaluation of the Masters on a rata basis. (Defendants' Post-Trial Reply Brief, pp. 9-10). However, because the defendants did not produce any other evidence regarding the value of the Kingsmen Masters, nor any of the other recordings, the pro rata approach is the only method of evaluation available. For example, Kountzman testified that the evaluation of the purchase price for the Koala catalog was done "primarily" by Mo Lytle, the owner of G.M.L. (R.T., Vol. IV, pg. 519:15-18). However, the defendants did not produce, by deposition or at trial, any testimony from Mr. Lytle regarding the value of the Kingsmen Masters. Moreover, when asked how G.M.L. arrived at the $500,000 purchase price, Kountzman testified that the recordings were not evaluated on an individual basis. (R.T., Vol. IV, pp. 519:19-20:1). Thus, in assessing the value of the Kingsmen Masters, the only evidence before the Court is the overall, purchase price of the Koala catalog, the number of masters considered valuable by G.M.L. , and the number of Kingsmen Masters considered of value.

(b) The Purchase Price.

Before deciding to purchase the Koala catalog, G.M.L. examined files to determine whether there were any royalties due. (R.T. Vol. IV, pp. 514:1-520:9). According to the

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prejudice with any specificity. In adopting the pro rata approach, rather than simply finding a lack of evidence, therefore, the Court is actually giving the benefit of the doubt to the defendants.

defendants, the purchase price of the catalog reflected several factors, including the amount of royalties due. (R.T., Vol. IV, pp. 519:15-520:5). After examining the file relating to the Kingmen Masters, G.M.L. concluded that no royalties were due. (R.T., Vol. IV pp. 521:2-10). Defendants argue that G.M.L. has suffered prejudice because it purchased the Koala catalog at a price based in part upon its belief that no royalties were due in connection with the Masters.

As noted above, G.M.L. failed to establish that the Kingsmen Masters represented a significant portion of the $500,000 purchase price. Indeed, the evidence shows that Masters reflect only $2,000-$2,500 of that price. The defendants stipulated that during the four years prior to the lawsuit, G.M.L. received about $20,000 in connection with Kingsman Masters. (R.T., Vol. IV pp. 444:23-445:2). Even if this were the only money earned by G.M.L. during ten years of ownership, G.M.L. earned a substantial return for a minimal investment in the Kingsmen Masters. Indeed, under the circumstances, G.M.L. actually benefited from the plaintiffs' delay, because they were permitted to exploit the Kingsmen Masters without paying royalties.[10] *See, e.g., Field v. Bank of America*, 100 Cal.App.2d 311 (1950)(in an action

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[10]G.M.L. will not be deprived of these profits in any future proceeding. Any new claim by the plaintiffs against G.M.L. for past royalties would be barred by claim preclusion. See Fund for Animals, Inc. v. Lujan, 962 F.2d 1391, 1398 (9th Cir. 1992) (claim preclusion bars the assertion of any theory of recovery that could have been asserted in the first action).

to annul a trust, trustee was not prejudiced, but actually benefited from the delay, because fees accrued for many years).

Even if G.M.L. had established prejudice, such prejudice must be a result of the plaintiffs' delay in order to support a laches defense. *See* Cal. Civ. Code § 1693 (relief "shall not be denied because of delay in giving notice of rescission unless such delay has been substantially prejudicial to the other party."); Airco, supra, 76 A.D.2d at 82 ("Laches bars recovery where a plaintiff's inaction has prejudiced the defendant and rendered it inequitable to permit recovery."). In the case at bar, any prejudice to G.M.L. was caused as much by its own negligence as it was the plaintiffs' delay. Such negligence should be balanced against the prejudice asserted by G.M.L. *See, e.g., Merchant v. Lymon*, 828 F.Supp. 1048, 1063 (S.D.N.Y. 1993)(prejudice is counterbalance by culpability of the defendant in creating the circumstances causing the prejudice).

As noted above, G.M.L. examined the seller's files before purchasing the Koala catalog. The Kingsmen file contained all of the relevant recording contracts, which provided that royalties were owed either to Jerden Records or to The Kingsmen. Nothing in the file indicated that the potential royalty recipients had been bought out, or were otherwise not entitled to royalties. G.M.L., recognizing the importance of determining whether any royalties were due, allegedly tried to locate Jerden, but was unsuccessful. According to Mr. Kountzman, G.M.L. ran a Dun & Bradstreet

report, called directory assistance in Seattle, and inquired with either the Secretary of State or Attorney General of Washington State. (R.T., Vol. IV, pg. 516:13-23).

When asked by the Court whether there was a written record of G.M.L.'s inquiry into the potential royalty obligations attached to the Kingsmen Masters, Mr. Kountzman testified that notes were kept at the time, and that he recently had reviewed the Kingsmen file. (R.T., Vol. IV, pp. 518:6-519:1). In spite of the specific inquiry from the Court, however, G.M.L. failed to produce either the notes or the file. Moreover, defendants failed to produce Mo Lytle, who was primarily responsible for putting together the Koala purchase. G.M.L. thus produced very little evidence of its attempt to locate Jerden. Given this lack of evidence, and an obvious incentive not to find any potential royalty claimants, the Court is not convinced that such efforts were made.

However, even if they were, there is no evidence at all that G.M.L. attempted to locate Jerry Dennon, who signed the contracts on behalf of Jerden, and there is no evidence that G.M.L. attempted to locate The Kingsmen. If G.M.L. had conducted a more thorough investigation, it could have found Dennon and/or The Kingsmen, and would have known that royalties were due on the Kingsmen Masters.[11] G.M.L. ,

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[11]For example, Dennon testified that he was listed in the Seattle phone book during the 1970's and 1980's. (R.T., Vol. III, pg. 330:11-17). When asked by the Court, Kountzman testified that he remembered Jerry Dennon's name from the contracts, but that he did not try to contact Dennon personally, and could not provide a reason

which specializes in obtaining master recordings without royalty obligations attached, should know how to determine whether royalties are owed on a given master, and should know how to prove that reasonable efforts were made to make such a determination. (See R.T., Vol. IV, pp. 512:19-513:16). Despite its experience, G.M.L. failed to produce evidence of a reasonable investigation.

Because the investigation was inadequate, G.M.L. could not reasonably assume that the Kingsmen Masters were unencumbered by any royalty obligations, and any prejudice resulting from that assumption was caused as much by the merchants' negligence as it was by the plaintiffs' delay.

(c) The Re-Recordings.

When G.M.L. purchased the Masters, G.M.L. already owned a re-recording of three Kingsmen songs, including "Louie Louie." This re-recording was performed by members of The Kingsmen, including the lead singer. (R.T., Vol. IV, pp. 520:5-9; 522:5-523:3; 525:5-526:5; 529:1-4). Stephen Kountzman testified that because G.M.L. owned the re-recordings, G.M.L. probably would not have purchased the original Masters if there had been royalty obligations

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for failing to do so. (R. T. , Vol. IV, pp - 54 5: 7 -54 6: 15). As for The Kingsmen, the group began performing again in the early 1980's, and continued throughout the decade. (R.T., Vol. IV, PP. 582:10-586:12). If G.M.L.'s investigation had been reasonably thorough, G.M.L. could have located both Dennon and The Kingsmen.

attached. *Id.*

Assuming that G.M.L. would not have purchased the Masters if it had known that royalties were due, the only prejudice to G.M.L. would be the portion of the purchase price attributable to the Kingsmen Masters. However, as noted above, the Kingsmen Masters represented just a faction of the purchase price, from which G.M.L. has earned a substantial return. Moreover, G.M.L. still owns the re-recordings. If the plaintiffs were to recover the Masters, G.M.L. would be in the same position as it was before, except for the profits earned during the years of its ownership. Therefore, G.M.L. has not established anything approaching substantial prejudice.

(d) Marketing Efforts.

Believing that no royalty payments were due, both G.M.L. and Highland undertook some efforts to market the Masters. (R.T., Vol. IV, pp. 526-5:24-527:22; 557:14-558:23). The defendants argue that they would suffer prejudice if the plaintiffs were permitted to rescind. As the Court noted at trial, the evidence of marketing efforts was slim.[12] Thus, the defendants have failed to produce evidence of any substantial prejudice resulting from the marketing

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[12]*See* statement by the Court at R.T., Vol. IV, pg. 581:20-22: "I, frankly, have heard very little effort on their part, very little testimony regarding effort by the defense to merchandise these materials. Very little."

efforts.

(e) Pricing.

In an attempt to establish prejudice, the defendants offered the testimony of Mr. Stephen Hawkins, president of Highland Music, Inc. ("Highland") (R.T., Vol. IV, 459:5-6) Highland, which was initially a defendant in this case, holds an exclusive license from G.M.L. in connection with the Kingsmen Masters. (R.T. , Vol. IV, pg. 460:23). Pursuant to that license, Highland marketed the Kingsmen Masters. Highland's decisions in pricing its products were based in part upon its assumption that no royalties were due. (R.T., Vol. IV, pp. 553:1-557:5). In Highland's low profit margin, even a small royalty obligation would be significant in its decision-making process. (R.T., Vol. IV, pg. 571:16-25). According to the defendants, Highland's reliance upon the lack of royalty obligation in pricing its products establishes prejudice sufficient to sustain their laches defense.

To begin with, it is doubtful that prejudice to Highland constitutes a defense for G.M.L. Although Highland was initially a defendant, the action against, Highland was stayed when Highland filed for or bankruptcy protection. More importantly, G.M.L., rather than Highland, owns the Masters and is Scepter's successor-in-interest. (R.T., Vol. I, pg. 11:7-9). Plaintiffs are attempting to recover the Masters from G.M.L., not Highland.

Laches, however, requires prejudice to the other party, not some third party. *See* Cal. Civ. Code § 1693 (substantial

prejudice to "the other party" required); *Airco, supra*, 76 A.D. at 82, 430 N.Y.S.2d at 187 ("Laches bars recovery where a plaintiff's inaction has prejudiced the defendant and rendered it inequitable to permit recovery.") (emphasis added) Therefore, any purported prejudice to Highland is not relevant to G.M.L.'s laches defense.

Of course, one might argue G.M.L. could not have licensed the Masters if there had been royalties due because Highland would not have licensed them from G.M.L. given Highland's low profit margin. However, G.M.L. did not make that argument, and did not offer any evidence that it could not have licensed the Kingsmen Masters to someone else.

In any event, even if prejudice to Highland somehow affects G.M.L., the court does not perceive any prejudice resulting from Highland's pricing decisions. If the plaintiffs were seeking to recover past royalties, the prejudice to Highland would be clear. However, because the plaintiffs seek only to rescind, Highland's pricing decisions are irrelevant. Highland marketed the Masters and charged a price that did not account for royalties. Highland did not pay any royalties on those sales, and is not now being asked to do so. Therefore, Highland will retain all of the profits which it expected to make when it priced the products. Under the circumstances, Highland will not suffer any prejudice as a

result of its pricing decisions.[13]

(f) Defense Prejudice.

The defendants also claim to be prejudiced because the passage of time has deprived them of evidence necessary to defend the case. In that regard, the defendants point out that "royalty statements which may have been rendered from Scepter to Jerden and from Jerden to The Kingsmen have all been lost." (Post-Trial Memorandum pg. 37). According to the defendants, such statements might have shown that the Kingsmen Masters were "unrecouped," and thus no royalties due to the plaintiffs.[14] The defendants argue that they could have defeated the rescission claim by proving that, because no royalties were due, there was no material breach.

At trial, however, the defendants stipulated that no royalty statements were ever sent to the plaintiffs. (R.T., Vol.

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[13]To the extent that it purchased an exclusive license from G.M.L., Highland could argue that it will suffer prejudice because the price of the license reflected Highland's belief that royalties were not due. Unlike the pricing decisions, this kind of prejudice would extend to sales that Highland expected to make in the future. However, the defendants did not offer any evidence as to the price of the license from G.M.L., and did not argue that Highland would suffer prejudice on this basis. Therefore, the defendants have not established such prejudice.

[14]Under the recording contracts, the costs of producing and promoting the Masters were advanced by the record companies. Until the advance costs were recovered, the Masters were "unrecouped" and the plaintiffs were not entitled to any royalties.

II, pg. 74:6-7). Moreover, defendants argued that the failure to account alone was a material breach, even if no royalties a due. (R.T., Vol. II, pp. 81:13-83:7). They cannot now argue defense prejudice resulting from the loss of royalty statements "which may have been rendered." By their own admissions, there were no statements, and the amount of royalties due is irrelevant to the materiality of the breach.

CONCLUSION

For the foregoing reasons, the Court finds that the plaintiffs are entitled to rescind the recording contracts. Thus, plaintiffs may recover possession of the Masters.

IT IS SO ORDERED.

Dated: /s/ 6/20/95

/s/ William D. Keller
Judge William D. Keller

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 93-4672 Date: 2/4/94

RICHARD PETERSON, et al., v. HIGHLAND MUSIC INC., GUSTO RECORDS, INC. AND G.M.L., INC.

PRESENT:

Hon. William D. Keller, Judge
Sara Tse, Deputy Clerk
Court Reporter -- None present
Plaintiff's Counsel -- None present
Defendant's Counsel -- None present

PROCEEDINGS:

I. INTRODUCTION

Before the Court is defendants' Highland Music, Inc. ("Highland") Gusto Records, Inc. ("Gusto") , G.M.L., Inc. ("GML") Motion to Dismiss pursuant to Rule 12, (b) (2), (b) (3) , for failure to file first, for lack of personal jurisdiction, and for improper venue. The underlying lawsuit involves contract dispute as to the ownership of certain master recordings performed by the plaintiffs.

II. FACTS

A. The identity of the plaintiffs and defendants Highland, Gusto, and GML

The plaintiffs are members of a musical group, "The Kingsmen," who allegedly performed various musical compositions in the 1960s, including "Louie, Louie." In 1963, the plaintiffs entered into an agreement with Jerden Records ("Jerden,") pursuant to which they agreed to render their exclusive recording services in the making of phonograph records, in exchange for royalty payments. (Complaint, p.3). Also in 1963, Jerden allegedly entered into agreements with Scepter Music, Inc., ("Scepter") transferring to Scepter certain master recordings that had been recorded by the Kingsmen under the Jerden agreement, in effect assigning to Scepter the contract between plaintiffs and Jerden. (Id.) Under that agreement, Scepter was to make royalty payments and Jerden, in turn, was to make payments to the plaintiffs.

In 1968, the plaintiffs allegedly entered into a recording agreement directly with Scepter, pursuant to which the plaintiffs agreed to render their recording services directly to Scepter. The plaintiffs further allege that they agreed to terminate their agreement with Jerden. Apparently, during the terms of the agreement, plaintiff recorded approximately 75 master recordings. (Id.)

The plaintiffs assert that ownership of the master recordings has been transferred many times since 1970, beginning with Scepter. At one point the Masters allegedly

was transferred to defendant Gusto and defendant Highland, which according to the plaintiffs, is under common ownership and control of or is a successor in interest to Gusto. (Id. p. 4). Notably, the defendants insist that neither Gusto nor Highland claims an ownership interest in the master recordings at issue but is merely a licensee of another defendant that does claim an ownership interest. (Def. Motion p.4,11)

Significantly, in a separate action, defendant GML has also claimed to be a successor in interest to Scepter and, as such, claims an ownership in interest in the master recordings embodying performances of the plaintiffs (Id.)

Furthermore, the plaintiffs contend that an June 15, 1993, Jerden assigned to plaintiffs all of, its rights in the master recordings, including any rights to receive royalties from the exploitation of these masters. Plaintiff's allege that they have received no meaningful royalty since 1965 despite the fact that the defendants, as assignees of the various agreements, have the duty to pay royalties to the plaintiffs as long as the master recordings are exploited. (Id. at p. 4)

B. The defendants' contacts with the forum state

Defendant Highland is organized under Missouri law, with its principal place of business in Michigan. Plaintiffs claim that Highland has conducted continuous business in California with regard to "The Kingsmen" master recordings and point to three relevant contracts in this regard. First, plaintiffs allege that Highland entered into at least one contract with Rhino Records Inc. ("Rhino") , a California-

based corporation, purporting to license these master recordings to Rhino. In its contract with Rhino, Highland allegedly claimed an ownership interest in "The Kingsmen" master recordings and purported to transfer these rights to Rhino. (Cohen Decl. Exh. A). Second, the plaintiffs that a Rhino actually paid royalties to "Gusto/Highland Music, (Cohen Decl. 9.2-4). Third, the plaintiffs allegedly observed cassette tapes for sale in Southern featuring the performances of The Kingsmen and bearing the name of "Highland Music."

Defendant Gusto is organized under Tennessee Law, with its principal place of business in Tennessee. Plaintiffs claim that Gusto has conducted continuous business in California and point to two relevant contracts. As noted above, Plaintiffs allege that Rhino paid royalties to "Gusto/ Music, Inc." for the rights to use "The Kingsmen" master recordings. In addition, a packaging a entitled a "The Best of the Kingsmen" bears the Rhino logo and reads "All tracks licensed from Gusto Records." (Cohen Decl. Exh. E).

Defendant GML apparently was dissolved in January 1993. At one point it was organized under Missouri laws, with its principal place of business in Tennessee. Plaintiffs allege that defendant GML is systematically and continuously transacting business in the forum, but the plaintiffs have not pointed to any specific contacts in this regard. (Amended Complaint p.2). As discussed above, in a separate action, GML claims to be a successor in interest to Scepter.

C. The various lawsuits filed

1. The case presently before the Court: Peterson v. Highland

On August 5, 1993, the plaintiffs filed in the Central District of California this rescission action against defendant Highland. In this lawsuit, the plaintiffs seek to rescind recording contracts entered into in the 1960s between the plaintiffs and Jerden and Scepter. The plaintiffs assert that Highland claims an ownership interest in the master recordings at issue.[1] As noted below, the plaintiffs later

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[1]This case was initially assigned to Judge Davies and was subsequently transferred to Judge Keller to be consolidated with a related case that was filed an February 8, 1993, and assigned to Judge Keller, Original Sound Record Co., Inc. v. Gusto Records, Inc., GML, Inc., CV 93-0307.

In that companion case, Original Sound Record Co. ("Original Sound") , alleges that it is a licensee of Scepter and has the right to manufacture and sell phonograph records and/or cassette tapes of the song "Louie, Louie," as performed by The Kingsmen. Original Sound contends that it has the right to the sound portion of audiovisual recordings. According to Original Sound, Gusto and GML have asserted that they are owners of the master recording "Louie,Louie" and that Original Sound has no rights to license the master for audio-visual works. In this companion case, Original Sound seeks a declaratory judgment as to its rights to license "Louie, Louie" and asserts a claim for slander of title. (First Amended Complaint a. 3, 4).

Notably, the day after original Sound filed its claims in the Central District of California, GML filed a case in Tennessee state Court which was eventually removed to the Middle District of Tennessee, GML, Inc. v. Original Sound Recording, Inc., CV 93-

amended their complaint to add a cause of action for declaratory relief against defendants Gusto and GML.

2. The New York Lawsuit: GML v. Peterson

On September 21, 1993, before the plaintiffs added defendants Gusto and GML, defendant GML filed a claim against plaintiffs in the New York Supreme Court. In its complaint, GML claims that it is a successor in interest to Scepter and seeks a declaratory judgment as to its ownership of the master recordings performed by the plaintiffs. The plaintiffs here (who are the defendants in the New York action) removed the case to the Southern District of New York. That Court has stayed its proceedings, pending the outcome of this motion. Significantly, GML and Gusto are represented by the same attorneys that represent Highland.

3. The Amended Complaint in Peterson v. Highland

On September 29 1993, in response to GML's filing the New York lawsuit, amended their to add defendants Gusto and GML to seek a declaratory judgment that plaintiffs own the master recordings in questions. (First Amended Complaint p. 4). Plaintiffs allege that Highland is "a related company" to GML and Gusto. (PI. Opposition p. 6).

The defendants move for dismissal on three grounds.

0124. This case, in turn, was transferred to the Central District of California and consolidated with the above companion lawsuit, CV 93-0307.

First, they argue that, pursuant to "Rule 12," a federal court must decline jurisdiction over and action when an identical action was previously filed in a different district Court. Second, the defendants argue that, pursuant to Rule 12(b)(2), this Court must dismiss the case because it lacks personal jurisdiction over the defendants. Third, the defendants argue that pursuant to Rule 12(b)(3) and 28 U.S.C. § 1391, this Court must dismiss the case because, given this lack of personal jurisdiction, this Court is not the proper venue for the lawsuit.

III. Discussion

A. Is this Court required to dismiss the action in light of the pending lawsuit in the Southern District of New York?

Under the "first to file" rule, premised not on Fed.R.Civ.P. 12m as the defendants argue, but rather on a generally recognized doctrine of federal comity, a district court may, in its discretion, decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district. Pacesetter Systems, Inc. v. Medtronic, Inc., 673 F.2d 93, 95 (9th Cir. 1982). "Normally, sound judicial administration would indicate that when two identical actions are filed in courts of concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit. . . . However, this 'first to file' rule is not a rigid or inflexible rule . . . . but rather is to be applied with a

view to the dictates of sound judicial administration." (Emphasis added.). Id.

Here, the defendants contend that the filing of the declaratory judgment action in New York state Court by one of the defendants, GML, on September 21, 1993, bars this Court's jurisdiction. The defendants argue that because the plaintiffs in this case did not add defendants GML and Gusto until September 29, 1993, the New York action was "first filed."

This Court is unpersuaded by the defendants' argument. The two actions are hardly "identical": they involve different parties and different issues. The New York action involves the plaintiffs and only one of the three defendants named in the lawsuit before this Court. By contrast, in the case cited by the defendants, all of the parties were involved in both actions. Id. at 95. Moreover, the New York action involves solely a request for declaratory relief, whereas the case in this action involves both a prayer for rescission or various contracts as well as a declaratory judgment as to the ownership of the master recordings at issue.

The defendants seem, to forget that the "first to file" rule is a discretionary one, and this Court is to consider judicial economy. Here, as noted in footnote one above, a companion case was filed in this same Court in February 1993 and has proceeded well past the pleading stage. Original Sound Record Co., Inc. v. Gusto Records, Inc., GMT, Inc., CV 93-0307. This Court determined that the two cases were

related and consented to the transfer of this case to its docket. Thus, it would hardly save judicial resources to dismiss this case and instead permit the purportedly "identical" case to continue in Southern District of New York.

Furthermore, it is far from clear that the defendants in fact filed their New York claim before the plaintiffs. Although the plaintiffs did not add GML or Gusto as defendants until after GML filed the New York case, the plaintiffs filed their initial action in August 1993. The defendants cite no authority to support their assertion that for purposes of applying the "first to file" rule, the addition of new defendants does not "relate back" to the date that the initial action was filed.

Finally, the circumstances surrounding defendant GML's filing of the New York case are suspect, and it appears that GML filed that case as a tactic to force this court to refrain jurisdiction and instead have the lawsuit tried in New York. It does not escape this Court's attention that defendant GML is represented by the same counsel as defendant Highland, the defendant originally named by the plaintiffs in this lawsuit. As discussed in footnote one, it appears that GML has attempted a similar maneuver in the companion case to this case. In that case, the day after that plaintiffs filed its claims against Gusto and GML in the Central District of California, GML filed a case in Tennessee state Court.

Accordingly, the defendants' motion to dismiss pursuant to the "first to file" rule is hereby DENIED.

B. Does this Court have personal jurisdiction over the defendants ?

Procedurally, it is the plaintiffs' burden to make a prima facie showing of personal jurisdiction in order to avoid a motion to dismiss. Lake v. Lake, 817 F.2d 1416 (9th Cir. 1987) Notably, this prima facie showing is relatively minimal because motions to dismiss made at the outset of the case are normally decided on the basis of declarations and discovery materials; plaintiffs are not required to establish a preponderance of the evidence at this stage. Farmers Ins. Exchange v. Portage La .Prairie Mut. Ins.., 907 F.2d 911, 912 (9th Cir. 1990). In deciding whether a prima facie case has been made, uncontroverted allegations are deemed true; and factual conflicts in the parties' declarations are resolved in the plaintiff's favor. WNS, Inc. v. Farrar., 884 F.2d 200, 204 (5th Cir. 1989).[2]

A Court can only exercise personal jurisdiction if it can do so consistent with both the state long arm statute and the federal due process clause. The California long arm statute is coextensive with the due process clause and extends jurisdiction to the maximum extent protected by due process. FDIC v. British-American Ins. Co., 828 F.2d 1439, 1441 (9th Cir. 1987).

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[2]Significantly, the plaintiffs claim that the defendants have refused to respond to any of the plaintiffs' discovery requests until after this Court responds to the motion to dismiss. (Def. Reply, Exh. C). Accordingly, the plaintiffs submitted only a modicum of discovery materials to establish personal jurisdiction.

Due process requires non-residential defendants have certain "minimum contacts" with the forum so that maintenance of a lawsuit does not "offend traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310 (1945) and World-Wide Volkswagen Corp. v. Woodson, U.S. 286, 291 (1980).

A court can exercise personal jurisdiction Of two varieties: "general jurisdiction" and "specific jurisdiction" General jurisdiction exists if a defendant's activities in the forum are "substantial, continuous, and systematic," even where those contacts are unrelated to the cause of action. Data Disc, Inc. v. Systems technology Assoc. Inc., 557 F.2d 1230, 1287 (9th Cir. 1977). Thus, where this higher showing of contacts is made, a court can exercise jurisdiction as to any cause of action, even if unrelated to the defendant's activities in the forum. Id.

Specific jurisdiction exists if a defendant's activities though not substantial or continuous, are closely related to the cause of action. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477-78 (1985). The Ninth employs a three-part test to determine whether the exercise of specific personal jurisdiction comports with due process (1) the nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he "purposefully avails" himself of the privilege of conducting activities in the forum, thereby invoking benefits and protection of its laws; (2) the claim must be one which "arises out of" or is related the defendant's forum-related activities;

and (3) the exercise of personal jurisdiction must be "reasonable." Data Disc, 357 F.2d at 1237; Farmers Ins. Ex., 907 F.2d at 913.

Here, the plaintiffs seem to allege both general and specific jurisdiction exist.

1. Purposeful Availment

The purposeful availment prong depends on whether the defendants' conduct and connection with the forum state are such that he should "reasonably anticipated being hauled into court there." World-Wide Volkswagen 444 U.S. at 297 The purposeful availment requirement may be satisfied by a foreign act that has an effect in the forum state. Farmers Ins. 907 F.2d at 913. For example, purposeful availment has been, found where a nonresident automobile insurance company doing no business in the forum nevertheless issued a policy that covered travel to the forum state and an insured event occurred there. Id.

In addition, purposeful availment has been found where a nonresident supplier sells goods in the forum state by "placing its products in the stream of interstate commerce with the expectation that they will be sold to consumers in the forum a State." World-Wide Volkswagen, 444 U.S. at 297-298.

Furthermore, courts have also found purposeful availment where a defendant entered into a licensing agreement contemplated the manufacture and marketing of the licensed item in the forum state. Southern Machine Co.

v. Mohasco Industries, Inc. 401 F.2d 374, 332 (6th Cir. 1968).

The defendants in this case assert that is "no nexus" between the forum and the defendants. The defendants offer no evidence to refute the plaintiffs allegations to this effect.

Here, the plaintiffs allege that (1) defendant Highland entered into a contract with an unrelated California-based record company, Rhino, purporting to have an interest in the Master recordings at issue in this lawsuit and purporting to transfer these rights to Rhino; (2) defendants Highland and Gusto were paid royalties by Rhino in this regard; (3) cassette tapes featuring "The Kingsmen" performances have been sold in California bearing both Highland's and Gusto's names as their origin. Thus, its appears that the defendants entered into obligations with a California company that they knew would have an effect in the forum. Although Rhino is not a party to this lawsuit, the subject matter of the defendants' agreement with Rhino appears to be the master recordings at issue here. Moreover, at this stage in the proceedings, this Court can infer from the presence of "The Kingsmen" cassette tapes that the defendants directed the sale of these tapes to the forum.

In this Court's view, the plaintiffs have made a prima facie showing that defendants Highland and Gusto have "purposefully availed" themselves of the benefits of California laws.

2. Relatedness to the Cause of Action

An action "arises out of" contacts with the forum if,

"but for" those contacts, the cause of action would not have arisen. Farmers Ins. Ex. , 907 F. 2d at 914. This requirement is also met when a cause or action is related to the non-resident's forum-related activities. Doe v. National Media Services 974 F.2d 143, 145 (10th Cir. 1992)

Here, it appears that the plaintiffs' alleged injuries are related to the defendants' alleged sales of cassette tapes featuring "The Kingsmen" in California. The gravamen of plaintiffs' complaint is their claim to royalties from the exploitation of the master recordings. Presumably, royalties were generated by these California sales and, accordingly, are at the heart of the Plaintiffs' claim. Moreover, the contract with Rhino also relates to the plaintiffs' claims because the subject the contract is the master recordings at issue here.

Thus, "but for" the defendants' allege wrongful claims of ownership to the master recordings and wrongful refusal to pay royalty payments to the plaintiffs, this cause of action would not have arisen. Farmers Ins. Exh., 907 F.2d at 914-915.

Accordingly, in this Court's view, the plaintiffs have made a prima facie showing that their claims are sufficient related to the defendants' contacts with the forum.

3. Reasonableness

To determine the "reasonableness" a forum's exercise of jurisdiction, several factors must assessed: (1) the burden on the defendant, (2) the existence of an alternative forum, (3) the convenience and effective relief for the plaintiff, (4) the

forum state's interest in adjudicating the suit. There is a presumption of reasonableness upon a showing that the defendant purpose fully availed directed his activities at forum residents, which the defendant bears the burden of overcoming by presenting a compelling case that jurisdiction would be unreasonable. Haisten v. Grass Valley Medical Reimbursement Fund, 784 F.2d 1392 (9th Cir. 1986).

Here, the plaintiffs have sufficiently established "purposeful availment" and consequently raised a presumption a reasonableness. The defendants have not offered any arguments to rebut this presumption.

In this Court's view, the plaintiffs have established a prima facie showing of reasonableness. Thus, at this preliminary stage, and in light of the plaintiff's limited ability to conduct discovery, it follows that the plaintiffs have made a prima facie showing of personal jurisdiction over the defendants and the defendants' motion to dismiss for lack of personal jurisdiction is DENIED.

3. Is this the proper venue for this action?

Under the federal venue statute, an action based on diversity of citizenship may be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . or (3) a judicial district in which the defendants are subject top personal jurisdiction at the time the action is commenced, if there is no district in which the action may

otherwise be brought. 28 U.S.C. § 1391(a).

The parties agree that only the third provision potentially applies to the facts here. However, the defendants argue that the defendants are not subject to this forum.

As discussed in the preceding section, the plaintiffs have made a prima facie showing that the defendants are subject to personal jurisdiction. Consequently, venue is proper under the third provision above and the defendants' motion to dismiss for improper venue is Denied.

IT IS SO ORDERED.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD PETERSON, an individual; MIKE MITCHELL, an individual; LYNNE EASTON, an individual; NORM SUNDHOLM, an individual; and BARRY CURTIS, an individual; Plaintiffs,	Case No. CV-93-4672 WDK (JGx)
v.	PRE-TRIAL CONFERENCE ORDER
HIGHLAND MUSIC, INC., a Missouri corporation; GUSTO RECORDS, INC., a Tennessee corporation; and G.M.L., INC., a Tennessee corporation, Defendants.	[Local Rule 9.8]
	Date: October 31, 1994
	Time: 2 p.m.
	Place: Courtroom of the Hon. William D. Keller

Following Pre-Trial proceedings, pursuant to Rule 16,

Fed. R. Civ. P., and Local Rule 9, IT IS ORDERED:

1. The parties are:

   a. Plaintiff Richard Peterson, an individual;

   b. Plaintiff Mike Mitchell, an individual;

   c. Plaintiff Lynne Easton, an individual;

   d. Plaintiff Norm Sundholm, an individual;

   e. Plaintiff Barry Curtis, an individual;

   f. Defendant Highland Music, Inc., a Missouri corporation;

   g. Defendant G.M.L., Inc., a Tennessee corporation;

   h. Defendant Gusto Records, Inc., a Tennessee corporation.

Each of these parties has been served and has appeared. All other parties named in the pleadings and not identified in the preceding paragraph (of which there are none) are now dismissed.

The action is stayed with respect to defendant Highland Music, Inc., which is in bankruptcy. Defendants contend that plaintiffs should either dismiss the action with prejudice as against Highland Music, Inc. or else continue the trial to a date after Highland's bankruptcy proceeding, as a piecemeal trial of the issues in this case is not warranted.

The pleadings which raise the issues are the First Amended Complaint, and the Answer to the First Amended Complaint. Defendants contend that the complaint of G.M.L., Inc. in the action entitled *G.M.L., Inc. v. Peterson, et al.*,

which was brought in the United States District Court for the Southern District of New York prior to plaintiffs' amending their complaint in this action to add Gusto Records, Inc. and G.M.L., Inc. as defendants, operates as a compulsory counterclaim in this action pursuant to Procedure 13(a).

2. Federal jurisdiction and venue are invoked on the grounds of complete diversity of citizenship, an amount in controversy exceeding $50,000 exclusive of interest and costs, and of defendants' residence (within the meaning of 28 U.S.C. § 1391(c)) in the Central District of California, 28 U.S.C. §§ 1332 & 1391. Defendants contend that this court does not have jurisdiction over them and also that venue is improper, since defendants neither reside in California nor have "minimum contacts" with California.

3. The parties estimate that the trial will take one to two (1-2) trial days.

4. The trial is to be a non-jury trial. At least one week prior to the trial date each counsel shall deliver to the Court and opposing counsel the findings of fact and conclusions of law the party expects the Court to make upon proof at the time of trial as required by Local Rule 13.5.

5. The following facts are admitted and require no proof:

a. Plaintiff RICHARD PETERSON, also known as RICHARD NICKLAUS, ("Peterson") is an individual residing in Oregon.

b. Plaintiff MIKE MITCHELL ("Mitchell) is an individual residing in Oregon.

c. Plaintiff LYNNE EASTON ("Easton") is an

individual residing in Oregon.

d. Plaintiff NORM SUNDHOLM ("Sundholm") is an individual residing in Oregon.

e. Plaintiff BARRY CURTIS ("Curtis") is an individual residing in Washington.

f. Defendant HIGHLAND MUSIC, INC., ("Highland") is, and at all relevant times was, a corporation organized under the laws of the State of Missouri, and has its principal place of business in Dearborn, Michigan.

g. Defendant GUSTO RECORDS, INC., ("Gusto") is, and at all relevant times was, a corporation organized under the laws of the State of Tennessee, and has its principal place of business in Nashville, Tennessee.

h. Defendant G.M.L., INC., ("GML") is, and at all relevant times was, a corporation organized under the laws of the State of Missouri, and has its principal place of business in Nashville, Tennessee.

i. GML acquired title to the Masters through a series of mesne conveyances from Jerden Records, Inc., ("Jerden") and/or Scepter Records, Inc., ("Scepter").

j. Neither Gusto nor GML has paid plaintiffs any royalties for the exploitation of the Masters since it acquired them.

6. The following facts, though stipulated, shall be without prejudice to any evidentiary objection: None.

7. The following issues of fact, and no others, remain to be litigated at the trial:

a. Who recorded "Louie, Louie" and the other

masters at issue?

b. When did plaintiffs become aware of defendants' claim of ownership of the Masters? [Defendants contend that this is not a relevant issue.]

c. What led defendants to believe that they had no obligation to pay plaintiffs royalties under the agreements from which defendants acquired title to the Masters? [Defendants contend that this is not a relevant issue.]

d. Did Gusto Records, Inc. or Highland Records, Inc: acquire title to the Masters? [Defendants contend that this is not a relevant issue.]

e. Have G.M.L., Inc. and its predecessor-in-interest exploited the Masters openly and notoriously with plaintiffs' knowledge? [Defendants contend that this is not a relevant issue.]

f. Did plaintiffs know that the Masters were being exploited for the last 30 years or so without compensation to them? [Plaintiffs contend that this is not a relevant issue.]

8. The following issues of law, and no others, remain to be litigated at the trial:

a. Does the court have personal jurisdiction over defendants? [Plaintiffs contend that the court has already decided this issue.]

b. Does the court have subject matter jurisdiction over this matter? [Plaintiffs contend that the court has already decided this issue.]

c. Do plaintiffs have standing to sue?

d. Are the members who recorded "Louie Louie" and "Haunted Castle" and who are not parties to this action necessary or indispensable parties to this action? [Plaintiffs maintain this is not an issue of law, because defendants failed to raise it in their answer: defendants maintain that they expressly preserved this defense for trial pursuant to Fed. R. Civ. P. 12(h)(2) because of the alleged falsity of the representation of the pleading only revealed in discovery.]

e. Is Jerden Records, Inc. a necessary party to this action? [Plaintiffs maintain this is not an issue of law, because defendants failed to raise it in their answer; defendants maintain that they expressly preserved this defense for trial pursuant to Fed. R. Civ. P. 12(h)(2) because of the alleged falsity of the representation of the pleading only revealed in discovery.]

f. Have defendants waived the defense of failure to join one or more necessary or indispensable parties by failing to include this as an affirmative defense in their answer?

g. Has there been a failure of consideration which entitles plaintiffs to rescind the agreements with defendants' predecessors?

h. To what extent does the decision in *Thomas v. Gusto*, 939 F.2d 395 (6th Cir. 1991) collaterally estop defendants from asserting that they had no obligation to pay plaintiffs any royalties?

i. Are plaintiffs entitled to rescission of agreements with G.M.L., Inc.'s predecessors or any other

entity claiming title to the Masters?

j. Is plaintiffs' claim for rescission barred by a statute of limitations?

k. Which statute of limitations, if any, applies to plaintiffs' claim?

l. Have plaintiffs waived their claim for rescission?

m. May defendants raise the affirmative defense of waiver when they failed to raise it in their answer?

n. Is G.M.L., Inc. entitled to a judicial declaration that plaintiffs have no claims to royalties in connection with the Masters?

o. Have plaintiffs complied with the contractual precedent precedent to termination of the recording agreements, to wit, that G.M.L., Inc. be given an opportunity to cure any alleged breach by Jerden Records?

9. All discovery is complete, except that defendants object.to plaintiffs' designation of the following witnesses: (1) the Custodian of Records of Windswept Pacific Music, Inc. and (2) Fred Wolinsky as an expert witness. Defendants contend that neither of these witnesses have any relevant testimony, and that the Court should bar any testimony of these witnesses since plaintiffs did not timely comply with Local Rule 9.4.6. If the court does not completely preclude the testimony of these two witnesses, defendants contend that they should be give an opportunity to depose them sufficiently in advance of the trial.

10. The Joint Exhibit List of the parties has been filed

herewith under separate cover as required by Local Rule 9.7. All exhibits may be stipulate to be admitted without objection, except those exhibits listed below:

Plaintiffs object to Exhibit Nos. 8, 9, 10 & 14, on the grounds of relevance, hearsay, and lack of authentication.

Defendants object to Exhibits Nos. 13, 17, 18, and 22 through 42 on the grounds of relevance, and to Exhibit No. 19, 20, and 21 an the grounds of relevance, hearsay, and lack of authentication.

11. Witness lists of the parties have heretofore been filed with the Court. Defendants object to plaintiffs' designation of the following witnesses: (1) the Custodian of Records of Windswept Pacific Music, Inc. and (2) Fred Wolinsky as an expert witness. Defendants contend that neither of these witnesses have any relevant testimony, and that the court should bar any testimony of these witnesses since plaintiffs did not timely comply with Local Rule 9,4.6. If the court does not completely preclude the testimony of these two witnesses, defendants contend that they should be give an opportunity to depose them sufficiently in advance of the trial.

Except for good cause shown only the witnesses identified in the lists will permitted to testify (other than for impeachment or rebuttal).

12. Each party intending to present evidence by way of deposition testimony has marked such deposition in accordance with Local Rule 9.4.9. For this purpose, the following depositions have been lodged with the Clerk as required by Local Rule 8.1.2.: None.

13. The following law and motion matters and motions *in limine* are pending and contemplated: Defendants have filed a motion for summary judgment to be heard at 3 p.m. on November 7, 1994.

14. The parties do not request any bifurcation of issues.

15. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this Pre-Trial Conference Order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: November 2, 1994

/s/ William D. Keller
WILLIAM D. KELLER
United States District Judge

Approved as to form and content:

COHEN AND LUCKENBACKER

By: /s/ S. Martin Keleti
S. MARTIN KELETI
Attorneys for Plaintiffs

CINQUE & CINQUE, P.C.
GOLDSTEIN & NONBERG

By: /s/ Neal M. Goldstein
NEAL M. GOLDSTEIN
Attorneys for Defendants

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS,	)	
Plaintiffs-Appellees,	)	
	)	No. 95-56393
v.	)	D.C. No.
	)	CV-93-04672-WDK-JGx
HIGHLAND MUSIC, INC.,	)	
Defendant,	)	
and	)	
GUSTO RECORDS, INC.;	)	
G.M.L., INC.,	)	
Defendants-Appellants.	)	

G.M.L., INC., a Missouri	)	
corporation; HIGHLAND	)	
MUSIC, INC.,	)	
Plaintiffs-Appellants,	)	
	)	No. 97-55599
v.	)	D.C. No.

	)	CV-96-022420-WDK-JGx
RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS;	)	
GERALD DENNON;	)	
JERDEN MUSIC, INC.,	)	
dba Jerden Industries, Inc.,	)	
dba Great Northwest Music	)	
Company, BBDO	)	
Worldwide Inc., dba BBDO	)	
Worldwide Network,	)	
Defendants-Appellees.	)	
RICHARD PETERSON;	)	
MIKE MITCHELL;	)	
LYNNE EASTON;	)	
NORM SUNDHOLM;	)	
BARRY CURTIS,	)	
Plaintiffs-Appellees,	)	
	)	No. 97-55597
v.	)	D.C. No.
	)	CV-93-04672-WDK
HIGHLAND MUSIC, INC.;	)	
GUSTO	)	
RECORDS, INC.;	)	

G.M.L., INC.,)
Defendants-Appellants.)
and
STEPHEN HAWKINS,)
Appellant.)

Appeals from the United States District Court
for the Central District of California
William D. Keller, District Judge, Presiding

Argued and Submitted
February 3, 1998--Pasadena, California

Filed April 10, 1998
Amended June 15, 1998

Before: Betty B. Fletcher, Frank J. Magill,*** and Thomas G. Nelson, Circuit Judges.
Opinion by Judge Fletcher

OPINION: ORDER AMENDING OPINION AND DENYING THE PETITION FOR REHEARING AND EN BANC REQUEST

The opinion filed on April 10, 1998, Slip Op. 3331, is

***Honorable Frank J. Magill, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

modified as follows:

Slip Op. page 3342, line 2, replace "They did not raise the issue in their responsive pleadings, nor in any motion for summary judgment, nor at trial." with:

"They did state in their answer that lack of personal jurisdiction was an affirmative defense. However, they did not include the defense in any motion for summary judgment, nor request dismissal at the close of plaintiffs' case for lack of personal jurisdiction (although they moved for dismissal on several other grounds), nor, post trial, did they request the district court to dismiss on the grounds that plaintiffs had failed to carry their burden of proving personal jurisdiction."

Slip Op. page 3346, line 7, change "granting" to "denying".

Slip Op. page 3346, line 13, add the following footnote after "*Brownlow v. Aman*, 740 F.2d 1476, 1483 (10th Cir. 1984)":

"We note that a different situation may be presented when a defendant enters a special appearance for the sole purpose of contesting jurisdiction in a separate hearing and otherwise refuses to participate in the litigation. *See, e.g., Sinatra v. National Enquirer*, 854 F.2d 1191, 1192-94 (9th Cir. 1988)."

With these amendments, the panel votes to deny the petition for rehearing. Judges Fletcher and Nelson vote to reject the suggestion for rehearing en banc, and Judge Magill so recommends.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX F

LICENSE AGREEMENTS

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 26th day of August, 1986, between GUSTO RECORDS of 1900 Elm Hill Pike, Nashville, TN 37210 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 4000 Warner Boulevard, Burbank, CA 91522 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of one (1) compact disc (the "Album") from said master recordings coupled with other recordings, as Licensee shall select during a period of five (5) years commencing on October 1, 1986 and ending on September 30, 1991.

(b) The Album is tentatively entitled "Rock Roots."

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through normal record retail channels.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and

understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through WEA Corporation.

2. Except as provided in this Agreement, all other rights in the master recordings reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of One Thousand Dollars ($1000.00) payable upon execution of this Agreement;

(b) a royalty of ~~Eight~~(/s/ten) Cents ($.10) per master listed on Scheduled "A" for each record manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns.

(c) Licensee agrees that the royalties payable shall be no less favorable to the Licensor than those royalties which the Licensee shall pay to any other person granting them the right to use masters in said record.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and

established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice substantially as follows: "Courtesy of Gusto Records" and all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject,

however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration hereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufacture hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon Licensor's written request be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and the perform this Agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any

person, firm or corporation and (c) the rights granted to Licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made use directly from a performance by an Artist and in the manufacture of records therefrom for sale to the public including, any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced,

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written

GUSTO RECORDS
"Licensor"
By /s/
An Authorized Signer
WARNER SPECIAL PRODUCTS, INC.
"Licensee"

By /s/ Michael Kapp
Michael Kapp
President

SCHEDULE "A"*

TITLE	ARTIST	PRODUCED UNDER LICENSE FROM
Louie Louie	Kingsmen	Gusto Records

*to the Agreement dated August 26, 1986 for use only in the package tentatively entitled "Rock Roots."

Letter from Janet Herrin
Director - Publishing and Contract Administration
Warner Special Products
Burbank, California

March 11, 1991
Ms. Sherry Millman
Highland Music Inc.
Ste. 1020 West
3 Park Lane Blvd.
Dearborn, MI 48126

Re: ROCK ROOTS now HIGHS OF THE 60's
Contract dated August 26, 1986

Dear Sherry:

You have granted us the right to distribute this volume for a five year period beginning October 31, 1986 and ending September 30, 1991. We are requesting your permission to extend our rights to distribute this package until September 30, 1996. This would allow the term of this agreement to expire with those of the other licensors involved who originally granted us ten year terms beginning on October 1, 1986.

If you are able to grant us permission, may I ask that you

return a signed copy of this request to me at your earliest convenience.

Thank you for your consideration.

Sincerely,
WARNER SPECIAL PRODUCTS, INC.
Janet Herrin
Director - Publishing and Contract Administration

ACCEPTED AND AGREED:
HIGHLAND MUSIC INC.

BY:

JH:es
/s/ 4-3-91 Sheri If you approve this, we should probably issue a new K with Highland to start when the Gusto K ends okay? Janet

EXHIBIT B

Master Recordings: Artist: The Kingsmen

1. Since You've Been Gone

2. Born in Chicago

3. Gerie Love

4. Break of Day

Exceptions to the Standard Agreement:

Advance: $200.00

Royalty: $0.25 per EP

Initials:_____

Initials: _____

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 2nd day of August, 1994, between GML of 1900 Elm Hill Pike, Nashville, TN 37210 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of one (1) prerecorded tape, including the compact disc counterpart thereof (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of five (5) years commencing on October 1, 1994, and ending on September 30, 1999.

(b) The Album is tentatively entitled "America's Top Twenty: 1960-1964."

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through normal retail channels.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through mail order in accordance with merchandising methods known and understood at the

mail order business as "subscription" or "club plan" methods, or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever.

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent.

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Essex Entertainment, Inc.

2. Except as provided in this Agreement, all other rights in the master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the payable upon execution of this Agreement;

(b) a royalty of Four Cents ($.04) per master listed on Schedule "A" for each record in prerecorded tape form manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns;

(c) with respect to records in compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this agreement less actual returns, the royalty rate set forth in Paragraph 3(b) above shall be

increased in the same proportion that the selling price of the Album in compact disc form bears to the selling price of the Album in tape form.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of

all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration hereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this Agreement and to grant to Licensee all rights

herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to Licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to

be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GML
"Licensor"

By: /s/ Moe Lytle
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: /s/ Tony Pipitone
Tony Pipitone
President

EXHIBIT "A"*

TITLE	ARTIST
Louie Louie	The Kingsmen

* to the Agreement dated as of August 2, 1994, for use only in the package tentatively entitled "America's Top Twenty: 1960-1964"

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 1st day of October, 1991 between HIGHLAND MUSIC INC. of Suite 1020 West, 3 Park Lane Blvd., Dearborn, MI 126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1 (a) Licensor hereby grants to Licensee non-exclusive right the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of one (1) compact disc (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of five (5) years commencing on ~~September 31~~, */s/ October 1, MK* 1991 and ending on September 30, 1996.

(b) The Album is tentatively entitled "Rock Roots".

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through normal record retail channels.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and

understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through */s/ WEA Corporation. MK*

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a royalty of Ten Cents ($.10) per master listed on Schedule "A" for each record manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns.

(b) Licensee agrees that the royalties payable shall be no less favorable to the Licensor than those royalties which the Licensee shall pay to any Licensee granting them the right to use masters in said record.

4. (a) Payment of royalties by Licensee to

Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be

made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration

thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to

licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed

this Agreement as of the date first above written.

GUSTO RECORDS
/s/HIGHLAND MUSIC INC. MK
"Licensor"
BY: */s/*_____
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: */s/ Michael Kapp*
Michael Kapp
President

SCHEDULE "A"*

TITLE	ARTIST
Louie Louie	Kingsmen

*to the Agreement dated October 1, 1991 for use only ad provided therein.

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 6th day of May, 1994 between GML OF 1900 Elm Hill Pike, Nashville, TN 37210 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1 (a) Licensor hereby grants to Licensee non-exclusive right the terms and conditions of this Agreement to manufacture and distribute Licensor's master recording only within the Territory under Licensee's label as included on a volume within a multi-volume continuity series of record albums entitled "Classic Rock." Each volume will consist of one album consisting of one (1) cassette tape, including the compact disc counterpart thereof (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of five (5) years commencing on the respective date of initial release of each Album subject hereto and ending five (5) years therefrom.

(b) The Album is tentatively entitled "Classic Rock: Animal Rock."

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to consumers in conjunction with specific radio, print and television advertising.

(d) Without limiting the generality of the

foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through mail order in accordance with merchandising methods known and understood in the mail order business as "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Time Life Music.

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of Seven Hundred Fifty Dollars ($750.00) payable upon execution of this Agreement;

(b) a royalty of Three Cents ($.03) per master listed on Schedule "A" for each record prerecorded tape form manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns;

(c) with respect to records in compact disc

form manufactured hereunder and sold or otherwise distributed pursuant to this agreement less actual returns, the royalty rate set forth in Paragraph 3(b) above shall be increased in the same proportion that the selling price of the Album in compact disc form bears to the selling price of the Album in tape form.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all

records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information

and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement

between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GML
"Licensor"
BY: */s/Moe Lytle*
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: */s/ Tony Pipitone*
Tony Pipitone
President

Letter from Dyanne Dillon
Assistant Manger
Contract Administration
Warner Special Products
Burbank, CA 91505

July 15, 1994

Ms. Sheri Millman
Highland Music, Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: Fun Rock/Heartland
Contract dated 1/1/93
"Louie, Louie"/The Kingsmen
"Mama Said"/The Shirelles

Dear Sheri:

We would like to request permission to extend the term of the above-referenced Agreement for a period of two (2) years commencing on January 1, 1995. In consideration of such approval, and contingent upon receiving permission from all participating licensors, we can offer an advance against 10,000 units.

When all participating licensors have agreed to an extension,

~~we will issue a new contract with GML~~, providing a royalty of $.04 per master for cassette and lp with the compact disc royalty proportionate.

Thank you for your consideration.

Kind regards,
/s/ Dyanne Dillon
Dyanne Dillon

Assistant Manger
Contract Administration

DD/me

ACCEPTED AND AGREED:
HIGHLAND MUSIC INC.
By: */s/*_____

LICENSE AGREEMENT

THIS AGREEMENT is made as of the lst day of January, 1993 between HIGHLAND MUSIC INC. of Suite 1020 West, 3 Parklane Blvd., Dearborn, MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of four (4) 12" 33 1/3 rpm phonograph record(s), including the prerecorded tape and compact disc counter-part thereof (the"Album") from said master recordings as Licensee shall select during a period of two (2) years commencing on January 1, 1993 and ending on December 31, 1994.

(c) The Album is tentatively entitled "Fun Rock".

(d) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to consumers in conjunction with specific television, radio and print advertising.

(e) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(f) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(g) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Heartland.

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of , payable upon execution of this agreement;

(b) a royalty of Four Cent ($.04) per master listed on Schedule "A" for each record in vinyl disc and prerecorded tape form manufactured hereunder and sold pursuant to this agreement less actual returns.

(c) with respect to records in compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this

agreement less actual returns, the royalty rate set forth in Paragraph 3(b) above shall be increased in the same proportion that the selling price of the Album in compact disc form bears to the selling price of the Album in vinyl disc form.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are

embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement

between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC, INC.
"Licensor"

By: /s/_____
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: /s/ Michael Kapp
Michael Kapp
President

SCHEDULE "A"*

TITLE	ARTIST
Louie Louie	Kingsmen

*to the Agreement dated January 1, 1993 for use only ad provided therein.

Letter from Betsy Brown
Contract Administration
Warner Special Products
Burbank, CA 91505

December 5, 1991

Ms. Sheri Millman
Gusto Records, Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: Fun Rock
Contract dated September 10, 1986

Dear Sheri:

Warner Special Products continues to receive requests from people who wish to purchase our album entitled "Fun Rock" containing master recordings which were licensed to us through an agreement with you dated September 10, 1986.

We feel that it would be worthwhile to reissue this package and would like to ask your permission to renew our contract for a period of two years commencing on January 1, 1992.

We would also like to expand the definition of the Album to include compact discs, the royalty for which would be the rate

provided in paragraph 3(b) of the Agreement, increased in the same proportion that the selling price of the Album in compact disc form bears to the Album in vinyl disc form.

Of course, this proposal is contingent upon our receiving approval from all of the licensors participating in this project, but should we obtain approval from all of our licensors, we can offer an advance of 10,000 units.

If this permission can be granted, may I ask that you return one signed copy of this letter to me at your earliest convenience. When all participating licensors have agreed to an extension, we will issue a new contract with Highland providing a royalty rate of $.04 for the masters "Louie Louie" and "Mama Said". Thank you for your consideration.

Sincerely,
/s/ Betsy Brown
Betsy Brown
Contract Administration

ACCEPT ED AND AGREED:
HIGHLAND MUSIC INC.
By: /s/_____

Letter from Janet Herrin
Director Contract and Publishing Administration
Warner Special Products
Burbank, CA 91505

August 17, 1988

Ms. Sheri Millman
G.M.L., Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: "FUN ROCK"
License dated September 10, 1986

Dear Sheri:

We would like to request permission to renew the term of the Agreement referenced above for a period of two (2) years commencing on January 14, 1989. In consideration of such approval, and contingent upon our receiving permission from all participating licensors, we can offer a guarantee against 5,000 units.

If you are able to grant us this extension, please return a signed copy of this letter to us at your earliest convenience.

Sincerely,

ACCEPTED AND AGREED:

WARNER SPECIAL
PRODUCTS, INC.

Janet Herrin
Director - Contract and
Publishing Administration

JH:mo
Enc.

GUSTO RECORDS
now G.M.L., INC
By: */s/ Moe Lytle*

Letter from Janet Herrin
Director Contract and Publishing Administration
Warner Special Products
Burbank, CA 91505

January 12, 1987

Mr. Moe Lytle
President Gusto Records
1900 Elm Hill Pike
Nashville, TN 37210

Re: "FUN ROCK".

Dear Mr. Lytle:

This is to advise you that pursuant to our Agreement with you in connection with the above-named Package, we are hereby exercising our option to extend the term of the Agreement for a period of two (2) years commencing on January 14, 1987.

Kind regards,
WARNER SPECIAL PRODUCTS, INC.
/s/ Janet Herrin
Janet Herrin
Director Contract and
Publishing Administration

JH:rb

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 10th day of September between GUSTO RECORDS of 1900 Elm Hill Pike, Nashville, TN 37210 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC. of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of four (4) 12" 33-1/3 rpm phonograph record (s), including the prerecorded tape counterpart thereof (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of three (3) months commencing on October 15, 1986 and ending on January 14, 1987 during which time Licensee shall conduct market tests and during which time 10,000 Albums may be sold.

(b) In the event that Licensee decides on the basis of market tests to fully advertise and market, the rights herein granted shall be extended for a period of two (2) years from January 15, 1987 and Licensee guarantees to Licensor that a minimum total of 40,000 record albums and prerecorded tapes shall be accounted for and paid for during

the extended term of this Agreement on the basis of the rate per master recording set forth in Paragraph 3 hereof. Licensee shall advise Licensor of its decision in writing prior to January 14, 1987.

(c) The Album is tentatively entitled "Fun Rock".

(d) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to consumers in conjunction with specific television, radio and print advertising.

(e) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(f) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(g) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Heartland.

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of , payable upon execution of this agreement;

(b) a royalty of Four Cents ($.04) per master listed on schedule "A" for each record in disc form and prerecorded tape form manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor

pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or

representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Lieensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon

Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for

sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GUSTO RECORDS
"Licensor"
By: */s/ Moe Lytle*
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: */s/ Michael Kapp*
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST	PRODUCED UNDER LICENSE FROM
Louie Louie	Kingsmen	Gusto Records

*to the Agreement dated September 10, 1986 for use only in the package tentatively entitled "Fun Rock."

Letter from Cyndi Goretski
Contract Administration
Warner Special Products
Burbank, CA 91505

November 3, 1992

Highland Music Inc.
c/o Gusto Records
1900 Elm Hill Pike
Nashville, TN 37210
Attn: Sherri Millman

Re: "60's Frat Rock"/"Louie, Louie"/The Kingsmen
Contract dated December 19, 1990

Dear Sherri:

We would like to request permission to extend the term of the above-referenced Agreement for a period of two (2) years commencing on March 21, 1993.

If you are able to grant us this extension, please return a signed copy of this letter to us at your earliest convenience.

Thank you for your consideration.

Sincerely, ACCEPTED AND AGREED:

/s/ Cyndi Goretski
Cyndi Goretski

HIGHLAND MUSIC, INC.
BY: */s/*_____

Contract Administration

CG:sh

Letter from Charity Landry
Contract Administration
Warner Special Products
Burbank, CA 91505

June 5, 1991

Highland Music, Inc.
c/o Ms. Sheri Millman
Gusto Records Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: "60's Frat Rock"

Dear Sheri:

Enclosed please find one copy of the executed agreement in connection with the above referenced package.

Please be advised that we are exercising our option to extend the term of the contract for a period of two years commencing March 21, 1991. Enclosed you will find the check in the amount of $2,000.00.

Kind regards,

WARNER SPECIAL PRODUCTS, INC.

Charity Landry
Contract Administration

CL:cg
Enclosure

LICENSE AGREEMENT

THIS AGREEMENT is made the 19th day of December, 1990 between HIGHLAND MUSIC of 1020 West, 3 Park Lane Blvd., Dearborn, MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of four (4) 12" 33-1/3 rpm phonograph record(s), including the prerecorded tape and compact disc counterpart thereof (the"Album") from said master recordings coupled with other recordings as Licensee shall select during a period of three (3) months commencing on December 21, 1990 and ending on March 20, 1991 during which time Licensee shall conduct market tests and during which time 10,000 Albums may be sold.

(b) In the event that Licensee decides on the basis of market tests to fully advertise and market, the rights herein granted shall be extended for a period of two (2) years from March 21, 1991 and Licensee guarantees to Licensor that a minimum total of 40,000 Albums shall be accounted for and paid for during the extended term of this Agreement on the basis of the rate per master recording set forth in Paragraph 3 hereof. Licensee shall advise Licensor of

its decision in writing prior to March 20, 1991.

(c) The Album is tentatively entitled "Fun Rock".

(d) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to consumers in conjunction with specific television, radio and print advertising.

(e) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(f) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(g) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Sessions.

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of Four Hundred Dollars ($400.00), payable upon execution of this agreement.

(b) a royalty of Four Cents ($.04) per master listed on Schedule "A" for each record which includes that master in disc form and prerecorded tape form manufactured hereunder and sold pursuant to this agreement less actual returns.

(c) with respect to records in compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this agreement less actual returns, the royalty rate set forth in Paragraph 3(b) above shall be increased in the same proportion that the selling price of the Album in compact disc form bears to the selling price of the Album in vinyl disc form.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days

prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and

hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this

Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC
"Licensor"
By: /s/_____
An Authorized Signer
WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: /s/ Michael Kapp
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST
Louie Louie	The Kingsmen

*to the Agreement dated December 19, 1990 for use only as provided therein.

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 6th day of June, 1990, between HIGHLAND MUSIC of Suite 1020 West, 3 Park Lane Blvd., Dearborn, MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee")

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of one (1) compact disc (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of one (1) year commencing on June 15, 1990 and ending on June 14, 1991.

(b) The Album is tentatively entitled "Tequila Premium."

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) as a premium to given away free with the purchase of Sauza Tequila.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or

"club plan" methods or;

(ii) as commercial tie-ins.

(e) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Domecq Inc.

2. Except as provided in this Agreement, all other rights in the Master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of One Thousand Four Hundred Ten Dollars ($1410.00) payable upon execution of this agreement;

(b) a royalty of Three Cents ($.03) per

master listed on Schedule "A" for each record in compact disc form manufactured hereunder and sold pursuant to this agreement less actual returns.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of

all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and

to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of

the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC
"Licensor"
By: /s/_____

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"
By: /s/ Michael Kapp
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST
Louie Louie	The Kingsmen

*to the Agreement dated June 6, 1990 for use only in the package tentatively entitled "Tequila Premium."

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 1st day of July, 1990 between HIGHLAND MUSIC of Suite 1020 West, 3 Park Lane Blvd., Dearborn, MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of four (4) 12" 33-1/3 rpm phonograph record(s), including the prerecorded tape and compact disc counterpart thereof (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of three (3) months commencing on July 1, 1990 and ending on September 30, 1990 during which time Licensee shall conduct market tests and during which time 10,000 Albums may be sold.

(b) In the event that Licensee decides on the basis of market tests to fully advertise and market, the rights herein granted shall be extended for a period of two (2) years from October 1, 1990 and Licensee guarantees to Licensor that a minimum total of 40,000 Albums shall be accounted for and paid for during the extended term of this Agreement on the basis of the rate per master recording set

prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and

hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this

Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada.

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC
"Licensor"
By: /s/_____
An Authorized Signer
WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: /s/ Michael Kapp
MICHAEL KAPP
PRESIDENT

LICENSE AGREEMENT

THIS AGREEMENT is made the 21st day of April, 1992, between HIGHLAND MUSIC, INC. of 3 Park Lane Blvd., Suite 1020 West, Dearborn, MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC. of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label one album consisting of one (1) prerecorded tape thereof (the "Album") from said master recordings coupled with other recordings as Licensee shall select during a period of two (2) years commencing on May 6, 1992 and ending on May 5, 1994.

(b) The Album is tentatively entitled Sandoz Pharmaceuticals.

(c) The Album may only be distributed by Licensee in the Territory in the following manner:

(i) premium to be given away free to physicians and pharmacists with the promotion of Tavist D.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and

understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as commercial tie-ins

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Personics Corporation.

2. Except as provided in this Agreement, all other rights in the master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of constituting an advance against 50,000 units for each master licensed hereunder, payable upon execution of this agreement.

(b) a royalty of Three Cents ($.03) per master listed on Schedule "A" for each record in prerecorded tape form manufactured hereunder and sold pursuant to this agreement less actual returns.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each

calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at

Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and

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(d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada.

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC

LABLE COPY

Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and

(d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada.

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC

"Licensor"
By: /s/_____
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: */s/ Michael Kapp*
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST
Louie Louie	The Kingsmen

*to the Agreement dated April 21, 1992 for use only as provide therein.

Letter from Betsy Brown
Director
Contract Administration
Warner Special Products
Burbank, CA 91505

October 30, 1992

Highland Music
c/o Ms. Sheri Millman
Gusto Records, Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: "Rock & Roll Era" - 1964

Dear Sheri:

Reference is made to the Agreement between Highland Music and Warner Special Products, Inc. dated November 15, 1990 as amended, regarding the licensing of recordings as specifically set forth in Schedule "A": attached hereto and made a part hereof. The following, when signed by Highland Music shall constitute a further modification to the Agreement:

Paragraph 1(b) shall be deleted in its entirety and the following substituted therefor:

The Albums hereunder are tentatively entitled "Rock & Roll Era" volumes: Roots of Rock II, Lost Treasures II, 60's Teen Time II, R & B Gems 11, 1954-1955, 1960, 1956 and 1964.

The distribution term with respect to 1964 shall commence as of February 27, 1992 and end on February 26, 1997.

Schedule "A" to the Agreement shall be amended to include the recordings "Louie Louie" by Kingsmen and

With respect to the Recordings licensed pursuant to amendment, the royalty rate provided for in Paragraph 3(b) shall be Four Cents ($.04) per master for each record in prerecorded tape form; with respect to records in vinyl disc and compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this agreement less actual returns, the royalty rate set forth in above shall be increased in the same proportion that the selling price of the Album in compact disc and vinyl disc format bears to the selling price of the Album in prerecorded tape form.

Except as expressly modified herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed.

Please return one signed copy of this amendment to us at your earliest convenience.

Sincerely,
WARNER SPECIAL
PRODUCTS, INC.
/s/ Betsy Brown
Betsy Brown
Director
Contract Administration

ACCEPTED AND AGREED:
HIGHLAND MUSIC

By: */s/* _____

BB:cr

SCHEDULE "A"*

TITLE	ARTIST	VOL.
Louie Louie	Kingsmen	1964

*to the Agreement dated November 15, 1990 for use only as provided therein.

LICENSE AGREEMENT

THIS AGREEMENT is made the 15th day of November, 1990 between HIGHLAND MUSIC of Suite 1020 West, 3 Park Lane Boulevard, Dearborn MI 48126 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 111 North Hollywood Way, Burbank, CA 91505 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture and distribute only within the Territory under Licensee's label a multivolume continuity series of record albums entitled "Rock and Roll Era". Each volume will consist of one album (the "Album") comprised of either two (2) 12" 33-1/3 rpm phonograph record(s) or one (1) cassette tape or one (1) compact disc from said master recordings coupled with other recordings as Licensee shall select during a period of time commencing on the respective date of initial release of each Album subject hereto and ending five (5) years therefrom.

(b) The Album hereunder is tentatively entitled "Rock n' Roll Era" -- Roots Of Rock II.

(c) The Albums may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to consumers in conjunction with specific television, radio and print advertising.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through mail order in accordance with merchandising methods known and understood in the mail order business as "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever.

(e) Licensee agrees that it will not sub-license or otherwise convey a rights under this Agreement without Licensor's consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Time Life Music.

2. Except as provided in this Agreement, all other rights in the master recordings are reserved to Licensor

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of constituting an advance against 15,000 units for each master licensed hereunder payable upon execution of this agreement;

(b) a royalty of Four Cents ($.04) per master listed on Schedule "A" for each record which includes that master in and pre-recorded tape form manufactured

hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns;

(c) with respect to records in vinyl disc and compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this agreement less actual returns, the royalty rate set forth in paragraph 3(b) above shall be increased in the same proportion that the selling price of the Album in compact disc and vinyl disc format bears to the selling price of the Album in prerecorded tape form.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master

recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon
Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are

embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada.

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HIGHLAND MUSIC
"Licensor"
By: /s/_____
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: /s/ Michael Kapp
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST	VOL.

*to the Agreement dated November 15, 1990 for use only as provided therein.

Letter from Janet Herrin
Vice President
Business Affairs
Warner Special Products

September 9, 1991

Ms. Sheri Millman
Gusto Records, Inc.
1900 Elm Hill Pike
Nashville, TN 37210

Re: "Rock and Roll Era 1964"
Contract dated October 7, 1985

Dear Sheri:

Our "Rock and Roll Era", series is doing extremely well. We have paid royalties on approximately 220,000 units for the material licensed from the Gusto catalog and included on our 1964 volume.

You have granted us the right to distribute this volume until February 26, 1992. We are requesting permission to distribute this volume for another five (5) years (that is, until February 26,1997).

If this permission can be granted, may I ask that you return

one signed copy of this letter to me at your earliest convenience. When all participating licensors have agreed to an extension, we will amend the existing contract with Highland providing a royalty rate of $.04 for the masters "Louie Louie" and

Thank you for your consideration.

Sincerely,
/s/ Janet Herrin

ACCEPTED AND AGREED:
HIGHLAND MUSIC INC.
BY: */s/* _____

JH:cg

Letter from
Janet Herrin
Director
Contract and Publishing Administration
Warner Special Products
Burbank, CA 91505

November 17, 1986

Gusto Records
1900 Elm Hill Pke
Nashville, TN 37210

Attn: Ms. Sherry Millman

Re: Rock and Roll Era

Gentlemen:

Reference is made to the Agreement between Gusto Records and Warner Special Products, Inc. dated October 7, 1985, as amended, regarding the licensing of recordings as specifically set forth in Schedule "A" attached hereto and made a part hereof. The following, when signed by you shall constitute a further modification to the Agreement:

Paragraph 1(b) shall be deleted in its entirety and the following substituted therefor:

The Albums hereunder are tentatively entitled "Rock and Roll Era," volumes 1954-55, 1961, 1962, 1960, 1964 and 1956.

Schedule "A" to the Agreement shall be amended to include the recordings "Louie Louie" by The Kingsmen,"

In consideration of the rights herein granted, we will pay you an additional non-returnable advance against royalties in the amount of Four Thousand Eight Hundred Dollars ($4800.00) constituting an advance of $1600.00 each for volumes 1960, 1964 and 1956.

Except as expressly modified all of the terms and conditions of the Agreement are hereby ratified and confirmed.

Please sign and return one copy of this amendment to us at your earliest convenience.

Sincerely,
WARNER SPECIAL PRODUCTS, INC.
/s/ Janet Herrin
Janet Herrin
Director -- Contract and Publishing Administration

ACCEPTED AND AGREED:
GUSTO RECORDS

By: */s/ Moe Lytle*

JH:ms

SCHEDULE "A"*

TITLE	ARTIST	VOL.	ROYALTY	PRODUCED UNDER LICENSE FROM
Louie Louie	Kingsmen	1964	$.04	Gusto Records

*to the Agreement dated October 7, 1985 for use only as provided therein.

Letter from
Janet Herrin
Contract Administrator
Warner Special Products
Burbank, CA 91522

November 13, 1985

Ms. Sherry Millman
Gusto Records
1900 Elm Hill Pike
Nashville, TN 37210

Re: Rock and Roll Era

Gentlemen:

Reference is made to the Agreement between Gusto Records and Warner Special Products, Inc. dated October 7, 1985 in connection with the above-named album. The following, when signed by you, shall constitute a modification to the Agreement:

Paragraph 1(a), line 7: after the words "one cassette tape," add "and one compact disc."

Paragraph 3 shall include the following subparagraph (c):

(c) With respect to records in compact disc form manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns, the royalty rate set forth in Paragraph 3(b) above shall be increased proportionately, based upon the selling price of such compact disc.

Except as expressly modified herein, all of the terms and conditions of the Agreement are hereby ratified and confirmed.

Sincerely,
WARNER SPECIAL PRODUCTS, INC.
/s/ Janet Herrin
Janet Herrin
Contract Administrator

ACCEPTED AND AGREED:
GUSTO RECORDS

By: */s/ Moe Lytle, Pres.*

JH:ms

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 7th day of October, 1985, between GUSTO RECORDS of 1900 Elm Hill Pike, Nashville, TN 37210 (hereinafter called the "Licensor") and WARNER SPECIAL PRODUCTS, INC., of 4000 Warner Boulevard, Burbank, CA 91522 (hereinafter called the "Licensee").

1. (a) Licensor hereby grants to Licensee the non-exclusive right on the terms and conditions of this Agreement to manufacture distribute only within the Territory under Licensee's label a series of record albums which will consist of approximately twenty (20) volumes. Each volume will consist of either one (1) album (the "Album") comprised of two (2) 12" 33-1/3 rpm phonograph record(s), or one cassette tape from the said master recordings coupled with other recordings as Licensee shall select during a period of time commencing on the respective date of the initial release of each Album subject hereto and ending five (5) years therefrom.

(b) The Albums hereunder are tentatively entitled "Rock and Roll Era," volumes 1954-55, 1961; 1962.

(c) The Albums may only be distributed by Licensee in the Territory in the following manner:

(i) through mail order directly to

consumers in conjunction with specific radio, television and print advertising.

(d) Without limiting the generality of the foregoing, it is specifically understood that Licensee shall not distribute such records:

(i) through direct mail and/or mail order in accordance with merchandising methods known and understood in the mail order business as "subscriptions" or "club plan" methods or;

(ii) as premiums of any kind or as commercial tie-ins or in conjunction with any product whatsoever;

(e) Licensee agrees that it will not sub-license or otherwise convey any rights under this Agreement without Licensor s consent;

(f) Notwithstanding the foregoing, Licensor consents to the distribution of records subject to this Agreement through Time Life Music.

2. Except as provided in this Agreement, all other rights in the master recordings are reserved to Licensor.

3. In consideration of the rights herein granted, Licensee agrees to pay Licensor:

(a) a non-returnable advance against royalties in the amount of _____ constituting an advance against 15,000 units for each master licensed hereunder payable upon execution of this agreement;

(b) a royalty of (see Schedule "A") per master listed on Schedule "A" for each record in disc form and prerecorded tape form manufactured hereunder and sold or otherwise distributed pursuant to this Agreement less actual returns.

4. (a) Payment of royalties by Licensee to Licensor due pursuant to Paragraph 3 hereof shall be made quarterly within sixty (60) days following the end of each calendar quarter and each such payment shall be accompanied by a statement setting forth the computation of the amount thereof.

(b) Licensor shall have the right to inspect the books and records of Licensee solely insofar as said books and records pertain to Licensee's sale of records hereunder. Such inspection shall be made on at least thirty (30) days prior written notice, during normal business hours by a Certified Public Accountant.

5. The payments by Licensee to Licensor pursuant to Paragraph 3 hereof are intended to include all

recording artist and producer royalties which shall be payable by Licensor.

6. Licensee agrees to pay and to be solely responsible for:

(a) All excise and other taxes for all records manufactured and sold hereunder.

(b) All copyright license fees, mechanical royalties or other fees payable to the copyright proprietors of all material embodied on the Album.

(c) All payments to the Music Performance Trust Fund, the Phonograph Record Manufacturers' Special Payments Fund or to any similar fund based on sales and established by collective bargaining agreement required to be made as a result of sales pursuant to this Agreement.

7. Licensee agrees that all records manufactured by it under this Agreement shall bear on the Album liner and/or sleeve notice as follows: "Courtesy of Gusto Records" and all copyright and other symbols or words specified by Licensor which may be necessary to protect the rights of the proprietor in and to the masters.

8. The parties agree to defend, indemnify and hold one another harmless against any and all liability, loss, damages, cost or expense, including court costs and reasonable attorneys' fees, paid or incurred by reason of a breach of any of their respective covenants, warranties or

representations hereunder.

9. Licensor agrees to furnish to Licensee a magnetic tape master copy of suitable quality of each master recording. At the time of delivery to Licensee of such master recording, Licensor shall supply to Licensee, in writing, the correct titles of the recorded works, all copyright information and the names of the recording artists whose performances are embodied on each such master recording.

10. All master recordings hereunder and all copyrights and rights in and to such master recordings shall remain the sole and exclusive property of Licensor, subject, however, to the rights of Licensee to make reproductions pursuant to the terms of this Agreement. At the expiration thereof, all master recordings supplied hereunder by Licensor shall, at Licensor's election be returned to Licensor, at Licensee's expense, or destroyed by Licensee with a certificate of such destruction furnished to Licensor.

11. Upon the expiration of this Agreement Licensee shall have the right to sell for a period of one (1) year any Albums previously manufactured hereunder. Such sales shall be made only in the manner permitted by this Agreement and shall be subject to the payment of royalties under the terms of this Agreement. All Albums in Licensee's hands remaining unsold at the expiration of such period shall, upon

Licensor's written request, be destroyed.

12. Licensor grants Licensee the right to use the names and likenesses of the artists whose performances are embodied in the master recordings, together with biographical material concerning them, for advertising and trade purposes only in connection with records subject to this Agreement.

13. Licensor represents and warrants that (a) it possesses the full right, power and authority to enter into and to perform this agreement and to grant to Licensee all rights herein granted and (b) the exercise by Licensee of any and all of the rights granted to Licensee herein shall not violate or infringe upon any common law or statutory rights of any person, firm or corporation and (c) the rights granted to licensee herein are free and clear of all claims, demands, liens, encumbrances, rights and obligations whatsoever and (d) Licensee shall not be required to make any payments of any nature for, or in connection with, the acquisition, exercise or exploitation of rights by Licensee pursuant to this Agreement, except as specifically provided hereinabove.

14. As used herein, the following terms shall have the following meanings:

"MASTER RECORDING" -- A record (as herein defined) made directly from a performance by an Artist and intended for use in the manufacture of records therefrom for

sale to the public, including any duplicates thereof.

"RECORD" -- Any disc (or other device) in which sounds alone are embodied so as to be capable of being automatically reproduced.

"TERRITORY" -- United States of America and Canada.

15. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and may not be modified or amended, except in writing. This Agreement shall be construed in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GUSTO RECORDS
"Licensor"
By: */s/ Moe Lytle*
An Authorized Signer

WARNER SPECIAL
PRODUCTS, INC.
"Licensee"

By: */s/ Michael Kapp*
MICHAEL KAPP
PRESIDENT

SCHEDULE "A"*

TITLE	ARTIST	VOL.	ROYALTY	PRODUCED UNDER LICENSE FROM

*to the agreement dated October 7, 1985 for use only as provided therein.

AGREEMENT

This Agreement is entered into this /s/1st day 'of /s/ June, 1991, between Highland Music, Inc., 1020 West, Three Parklane Boulevard, Dearborn, MI 48126 (Licensor) and Rhino Records, Inc., d/b/a Rhino Home Video, 2225 Colorado Avenue, Santa Monica, CA 90404 (Licensee)

W I T N E S S E T H

Licensor is successor in interest to certain rights in and to the name, likeness, performance and/or voice recording (Rights) of "The Kingsmen" (Artists), a recording group that gained popularity in the 60's, ; and,

The name, image, likeness, performance and voice recording appears in a certain audio visual production originally filmed and broadcast on network television in the 60's entitled "Shindig"; and,

Licensee desires to license the Rights to "Louie Louie", a song made popular by Artists (Selection) for use in Licensee's video product entitled "Shindig" (Production); therefore,

In consideration of the terms and conditions of this Agreement the parties agree as follows:

1. GRANT OF RIGHTS

Licensor grants to Licensee;

a. the non-exclusive right to use the name, likeness, image, performance and/or audio recordings of the Selection embodied in the Production for use in audio

visual devices now or hereafter known that enable the Production to be received visually when used in combination with or as part of a piece of electronic, mechanical or other apparatus through a playback system or device (Videograms);

b. the non-exclusive right to use Artist's name, biography, photograph or likeness for informational purposes and for advertising, promotion and publicity of the Production by use of any portion of the Production in whole or in part in relation to Artists, including but not limited to audio only or audio visual.

2. TERM AND TERRITORY

This Agreement shall be effective beginning the /s/10th day of /s/ July, 1991, and shall continue in perpetuity (Term) and the territory shall be the world (Territory).

3. ROYALTY AND OTHER PAYMENTS AND PERMISSIONS

a. Licensee shall pay to Licensor:

i. a non-refundable advance recoupable against future sales $450.00 U. S. payable e upon release of the Videogram;

ii. a continuing royalty of 4 1/2 cents per selection per unit for each Videogram sold and not returned.

b. Licensee shall pay 50% of the royalties in 3.a. for sales as a result of direct, mail order, record club, foreign,

and military sales.

c. No royalties will be payable by Licensee to Licensor for Videograms given away or furnished on a non-profit basis to disc jockeys, television stations, dealers, members of the press or for, Videograms sold at scrap or close out prices.

d. Licensee will obtain the necessary permissions from appropriate holders of publishing rights and will make direct payment to the holders of said rights.

e. Licensor acknowledges the industry is speculative and Licensee makes no warranty as to the number or Videograms to be sold.

4. BOOKS, RECORDS AND AUDIT

a. Licensee shall keep books and records in the usual and customary manner and will make entries therein relating to the sale of Videograms and all fees, royalties, and payments which it is required to make hereunder

b. Licensee shall send to Licensor a statement setting out in detail the Royalties accruing to the Licensor within sixty (60) days of March 31, June 30, September 30, and December 31 of each year. Said statement will itemize the Royalties owed to Licensor per country for the preceding three (3) month period. Each statement shall be accompanied by payment of all Royalties payable hereunder. The statements will appear substantially as follows:

- the number of Videograms sold

- the actual retail price paid by the consumer
- the royalty rate and due royalty amount per Videogram
- the total amount due per Videogram
- the country of sale

c. Upon giving Licensee fifteen (15) days notice Licensor shall have the right to examine Licensee's books records, information and documents of any relating to the manufacture, sale, distribution, warehousing, inventory or other disposition of the Videograms with respect to any statement provided hereunder no more than one time per statement and said examination must occur within one year from the date of said statement. Said examination will be during normal business hours at the location where said books and records are maintained. Licensee shall also have the right to take a physical inventory of said Videograms.

d. The cost of the examination set forth above shall be at the expense of Licensor unless such examination reveals an underpayment in the Royalties due Licensor of 10% or more of the amount payable to Licensor. In such event Licensee shall reimburse Licensor for the cost of said verification, which shall include but not be limited to accounting fees travel expense and any other costs. In addition, Licensee shall immediately pay Licensor the additional Royalties plus interest at the rate of 1 1/2% per month of the additional amount.

5. LIMITATION OF RIGHTS

Licensee shall not have any rights except those granted by this Agreement and said rights shall not be used for product endorsement or merchandising tie-ins not related to the Production or the Videograms.

6. LIABILITY OF LICENSOR

Licensor warrants it has the right to grant the rights hereunder. Licensor's liability to Licensee for breach of its obligations hereunder shall be limited in amount to the consideration Licensor has received from Licensee under the terms of this Agreement. Licensee accepts said license without any other warranty or representation by or recourse against Licensor.

7. APPLICABLE LAW

This agreement shall he interpreted in accordance with the laws of the State of Tennessee and the State courts of the State of Tennessee shall be the courts of exclusive jurisdiction

8. ASSIGNMENT AND SUBLICENSE

This Agreement is not assignable and Licensee shall have no right of sublicense except Licensee may assign this Agreement to Capital Cities/ABC, Inc., its parent, subsidiary and affiliate entities, to any parent or subsidiary or affiliate

entity of Licensee or to any financially responsible entity which acquires all of Licensee's stock or assets and/or merger, consolidation or other reorganization any such assigned or sub assignee shall assume all obligations under this Agreement.

9. COMPLETE AGREEMENT

The terms set forth herein represent the complete agreement between the parties. There are no other representations relied upon by either party which are not set forth herein. Any modifications, deletions, changes, or additions must be in writing and signed by both parties.

10. WAIVER

The failure of Licensor to enforce any of its rights hereunder shall not be construed to be a waiver thereof. Licensor's rights will continue and shall not be affected by the absence of enforcement of any of the provisions of this Agreement or at law.

11. SEVERABILITY

In the event any part of this Agreement shall be determined unenforceable or invalid by any Court of competent jurisdiction the remainder of this Agreement shall remain in full force and effect.

12. HEADINGS

The headings of each paragraph hereunder are not intended to define nor limit the scope of each paragraph but are included only for the convenience of the parties. The fact that a heading may not include all of the subject matter of a paragraph will not invalidate any of the provisions hereof.

In witness whereof, the parties have caused this Agreement to be executed as of the day and year first written above.

HIGHLAND MUSIC, INC.	RHINO RECORDS INC.
By: /s/_____	By: /s/_____
Its: President	Its: /s/ Exec. VP